

- (2) During a status hearing, the judge denied complainant a defense, stating she would not allow a trial to take place within a trial.
- (3) The judge inaccurately described complainant's eye surgery as "cosmetic" and refused to continue complainant's trial until complainant's doctors stepped in to protect him.
- (4) The judge allowed the government to present all its witnesses and evidence but refused to allow complainant's witnesses and evidence.
- (5) The judge made clear throughout the trial that time was an issue, as evidenced by her telling the government's attorney to hurry up with his closing statement.
- (6) The Assistant United States Attorney fell asleep during complainant's trial, and the judge told him she was not going to argue his case for him.
- (7) The judge revoked complainant's bond after he accidentally encountered a government witness at a local restaurant, without giving complainant a chance to be heard.
- (8) The judge attempted to prevent complainant from writing a factual account of a high-profile police shooting.
- (9) The judge took her anger, frustration, impatience, and other personal issues out on the people who came before her, creating an atmosphere of intimidation.
- (10) The judge was unfair, biased, and corrupt.

A claim of disability under the Judicial Conduct and Disability Act requires a showing that the judge suffers from an impairment that renders the judge "unable to discharge the duties of the particular judicial office." Rule 3(e), Rules for Judicial-Conduct and Judicial-Disability Proceedings. A claim

of misconduct under the Act requires a showing that the judge engaged in conduct that violated mandatory standards of judicial conduct and was prejudicial to the administration of justice. Rule 3(h), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

The Act does not permit review of claims that are "directly related to the merits of a decision or procedural ruling." 28 U.S.C. § 352(b)(1)(A)(ii); see In re Memorandum of Decision, 517 F.3d 558 (U.S. Jud. Conf. 2008). To avoid the merits-related bar, a complainant must present "clear and convincing evidence of a judge's arbitrary and intentional departure from prevailing law based on his or her disagreement with, or willful indifference to, that law," 517 F.3d at 562, or evidence that the judge had an improper motive for his or her ruling, Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Misconduct cannot be shown where the only support for the allegations is the merits of the judge's ruling. In re Doe, 640 F.3d 869, 873 (8th Cir. Jud. Council 2011).

An allegation of misconduct may also be made based upon a judge's ill treatment of the parties or attorneys. Such a claim requires a showing that the judge treated "litigants, attorneys, or others in a demonstrably egregious and hostile manner." Rule 3(h)(1)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings. The language used by the judge in proceedings or

rulings is not, however, subject to misconduct review simply because a party deems it offensive; language that is relevant to the case at hand is presumptively merits-related and not subject to review. See Commentary on Rule 3, Rules for Judicial-Conduct and Judicial-Disability Proceedings, at 6.

Complainant's allegations that the judge imposed limits on the scope of argument, described complainant's eye surgery as cosmetic, allowed all of the government's evidence but refused to allow complainant's evidence, told the prosecutor to hurry up, told the prosecutor she was not going to argue his case for him, and revoked complainant's bond all raise merits-related claims. Complainant has presented no evidence that the judge's rulings demonstrated willful indifference to the law, bias, or egregious and hostile treatment of parties or attorneys.

It was the judge's responsibility to control the admission of evidence and the scope of argument, and she carefully set out the reasons for her rulings throughout the proceedings. Complainant's objections to the judge's description of his eye surgery as cosmetic and to the judge's revocation of his bond without a hearing fail to raise an inference of misconduct. The judge granted complainant's motion to continue the trial due to his eye surgery, and the revocation of his bond upon return of the jury's guilty verdict was in accordance with 18 U.S.C. § 3143(a) (judicial officer shall order that a person who has

been found guilty and is awaiting imposition of sentence be detained unless the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community).¹ Complainant's objections raise nothing more than merits-related challenges to the judge's rulings.

Complainant's allegations that the judge became agitated, took her personal frustrations out on others, and conducted the proceedings in an unfair manner are conclusory in nature and fail to allege specific facts giving rise to a claim of misconduct or disability. The allegations establish neither the judge's egregious treatment of those appearing before her nor inability on her part to discharge the duties of office due to mental or physical impairment.

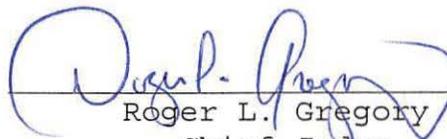
Complainant's allegation that the judge tried to prevent him from writing about a high-profile police shooting is likewise without any factual support. Complainant suggests that displeasure with his efforts to expose the abuses and corruption

¹ Although complainant alleges only that his bond was revoked without a hearing based on inadvertent contact with a government witness, the record indicates that complainant was remanded to the custody of the U.S. Marshal upon return of the jury's guilty verdict. See Judgment order and order scheduling sentencing (DE 109). The record also reflects complainant's intention to seek release on bond upon completion of his psychiatric examination. See Defendant's response to motion for psychiatric exam (DE 115).

of police officers and federal agents was behind any adverse rulings the judge made in his case and that the judge sent him to a federal facility in Texas for his psychiatric evaluation to keep him away from litigation over a police shooting.² Complainant provides no factual support for his speculation about the judge's motives, and his speculation affords insufficient grounds for an inference of misconduct. See In re Complaint of Doe, 2 F.3d 308 (8th Cir. Jud. Council 1993).

The record in complainant's case reflects that the judge conducted the proceedings in a fair and unbiased manner consistent with the effective and expeditious administration of the business of the courts. This judicial complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) as related to the merits of the judge's decisions and § 352(b)(1)(A)(iii) as lacking in factual support.

IT IS SO ORDERED.



Roger L. Gregory
Chief Judge

² Complainant did not oppose the request for a psychiatric examination and asked that it be conducted at a federal medical facility at which the examiner would have an extended period of time to observe and interact with him. See Defendant's response to motion for psychiatric exam (DE 115).