



complaint naming each defendant against whom he was asserting a claim and providing copies of his administrative grievances against those defendants. The district judge warned complainant that failure to comply could result in dismissal of the action without prejudice.<sup>1</sup> Complainant responded by letter, stating that copies of his grievances against several of the defendants were previously filed and that he did not have access to his grievance against the final defendant as a result of his move to a different prison. Complainant appealed the district judge's order and also filed a petition for writ of mandamus against the judge. Both cases are pending on appeal.

In this judicial complaint, complainant alleges that the judge engaged in misconduct by:

- 1) improperly dismissing his complaint for failure to exhaust administrative remedies as to all defendants, in violation of Jones v. Bock, 549 U.S. 199 (2007);
- 2) mailing the order to an incorrect address, even though complainant had provided a new address, thereby depriving complainant of adequate time to respond to the order;
- 3) failing to file three civil rights actions mailed by complainant, which the district court has been unable to locate;
- 4) failing to address complainant's requests;

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<sup>1</sup> The clerk entered the judge's order as a dismissal without prejudice and entered judgment on the order.

- 5) repeatedly dismissing complainant's actions without prejudice and without ever reaching the merits; and
- 6) failing to accord complainant the fair treatment he receives from the district judge in another district.

The Judicial Conduct and Disability Act establishes an administrative remedy for judicial misconduct or disability. The procedure "is not designed as a substitute for, or supplement to, appeals or motions for reconsideration," In re Memorandum of Decision, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008), and allegations that are "directly related to the merits of a decision or procedural ruling" are subject to dismissal under the Act. 28 U.S.C. § 352(b)(1)(A)(ii). If, however, the complainant demonstrates "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's ruling was the result of a bribe, ex parte contact, racial bias, or other improper motive, Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings, a claim may be brought under the Act.

The complainant must present "sufficient evidence to raise an inference that misconduct has occurred." 28 U.S.C. § 352(b)(1)(A)(iii). If "the only support for the allegation of bad acts or motive is the merits of the judge's ruling," the

complaint must be dismissed. In re Doe, 640 F.3d 869, 873 (8th Cir. Jud. Council 2011).

Complainant's allegations of misconduct fail to demonstrate that the judge was willfully indifferent to the law or motivated by bias against complainant. The record reflects that the judge requested that complainant clarify the defendants named in the action and whether he had exhausted administrative remedies as to those defendants. In light of complainant's filing of multiple amended complaints, this was a reasonable request and fails to suggest deliberate indifference to the law or bias.

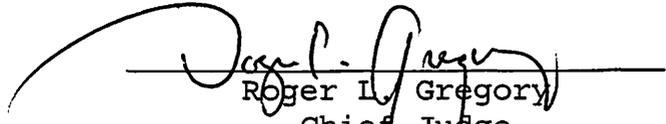
Complainant's allegations that three of his civil rights complaints were never filed and have not been located and that the judge's order was sent to his former address even though he had informed the court of his new address also fail to show misconduct on the part of the judge. Filing of complaints and service of orders are the responsibilities of the clerk rather than the judge, and there is nothing to suggest any judicial misconduct in these matters.

Complainant also alleges that neither the clerk nor the judge has appropriately responded to his inquiries about his three civil rights complaints or other concerns. He alleges that the district judge simply dismisses his complaints without prejudice and never reaches the merits. He contrasts this treatment with the handling of litigation in another district,

which he considers more responsive and more fair. Complainant's allegations that the judge has overlooked, failed to reach, or incorrectly decided issues are directly related to the merits of the judge's rulings and must be raised on appeal rather than through a judicial complaint. To the extent complainant challenges actions of the clerk, the allegations are not cognizable in a judicial misconduct proceeding.

Complainant's allegations of judicial misconduct are, accordingly, dismissed as merits related and lacking in factual support. 28 U.S.C. § 352(b)(1)(A)(ii) & (iii).

IT IS SO ORDERED.

  
Roger L. Gregory  
Chief Judge