

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

In the Matter of a	*	
Judicial Complaint	*	No. 04-16-90081 04-16-90082
Under 28 U.S.C. § 351	*	

MEMORANDUM AND ORDER

Complainant brings these judicial complaints pursuant to the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364, against the federal district judge and federal magistrate judge assigned to complainant's employment discrimination case. The Act provides an administrative remedy for judicial "conduct prejudicial to the effective and expeditious administration of the business of the courts" and for judicial inability to "discharge all the duties of office by reason of mental or physical disability." 28 U.S.C. § 351(a).

After unsuccessfully applying for sales positions with three car dealerships, complainant filed charges of discriminatory and retaliatory failure to hire with the Equal Employment Opportunity Commission (EEOC). The EEOC issued a right to sue notice, and complainant filed suit in district court against the EEOC, the EEOC's district director, and the

car dealerships.¹ Over the course of the litigation, the magistrate judge issued a series of five memoranda and recommendations on motions to dismiss, for sanctions, and for other relief. After reviewing the complainant's objections to the magistrate judge's recommendations, the district judge granted the motions to dismiss and imposed monetary and filing sanctions on complainant. Complainant's appeal is currently pending in the court of appeals.

For his statement of facts in these judicial complaints, complainant simply attaches copies of documents relating to his case. Some of these documents include allegations against the district judge and magistrate judge, which presumably form the basis for complainant's misconduct claims. Complainant alleges that:

- the district judge operated under a conflict of interest and failed to act with impartiality;
- the district judge and the magistrate judge helped the defendants and their attorneys and granted them personal favors;
- the district judge and the magistrate judge demonstrated racial, ethnic, and personal bias against complainant;

¹ Complainant had, over the previous five years, litigated four similar employment discrimination actions in the district court.

- the district judge treated complainant in a hostile and egregious manner;
- the district judge failed to investigate or discuss an alleged misrepresentation in defense counsel's certificate of service or an alleged ex parte communication between defense counsel and the magistrate judge's law clerk;
- the district judge failed to investigate or discuss the court clerk's error in the file-date assigned to a document;
- the district judge denied complainant's motion for a conference to review matters overlooked by the magistrate judge.

The Judicial Conduct and Disability Act permits review of judicial conduct, not judicial decisions. 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).

Claims that are "directly related to the merits of a decision or procedural ruling" are barred from review 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," In re Memorandum of Decision, 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).

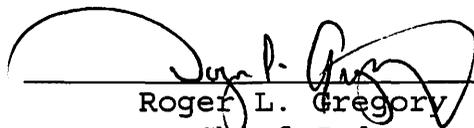
Complainant has failed to present any factual support for his claims of conflict of interest, granting of personal favors, bias, hostile treatment, or other misconduct. Contrary to complainant's claims, the record reflects that the district judge and the magistrate judge treated complainant fairly, displayed no bias, granted no favors, and did not subject complainant to egregious or hostile treatment.

Complainant's allegations that the district judge failed to investigate or discuss complainant's allegations regarding defense counsel's certificate of service, defense counsel's ex parte communication with a law clerk, a court clerk's filing error, or matters overlooked by the magistrate judge are all directly related to the merits of the district judge's rulings.

The judge's order denying complainant's motion for a telephone conference to discuss these matters set out the reasons why he found such a conference unnecessary. Complainant's allegation that they deserved more of the judge's attention is a merits-related allegation and does not support an inference of misconduct.²

Accordingly, this judicial complaint is dismissed as merits-related and lacking in factual support. See 28 U.S.C. § 352(b)(1)(A)(ii) & (iii).

IT IS SO ORDERED.



Roger L. Gregory
Chief Judge

² Complainant alleged that the magistrate judge's law clerk may have engaged in ex parte communication with defense counsel about the certificate of service because the law clerk took defense counsel's side when complainant called to complain. Complainant also alleged that the file-date error made by the clerk was deliberate rather than inadvertent. Since the alleged service and filing errors had no impact on complainant's case, there is no reason to suppose that the judge had any improper motive for failing to investigate the allegations.