

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

In the Matters of a	*	No.	04-15-90004
Judicial Complaint	*		
Under 28 U.S.C. § 351	*		

MEMORANDUM AND ORDER

Complainant brings this judicial complaint against a federal district judge pursuant to the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364. The Act provides an administrative remedy for "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).

Complainant was convicted, following a jury trial on drug conspiracy, money laundering, and other charges, and sentenced to life imprisonment. His appeal from that judgment was affirmed by the court of appeals. Complainant then filed a motion to vacate his conviction and sentence under 28 U.S.C. § 2255. The district judge denied the motion, and complainant's appeal of that order is pending in the court of appeals.

Complainant alleges in his judicial complainant that the district judge demonstrated bias and prejudice towards him and favoritism towards the government. Specifically, complainant points to the judge's use of "we" in the following statement as evidence that the judge viewed himself as part of the prosecution team: "I don't know that the government could come back and charge another conspiracy over the same time frame against this defendant and say there's some other people that we have in the second trial that we didn't have in mind the first." Complainant further contends that the judge displayed his prejudice throughout the proceedings by crafting arguments for the government and mischaracterizing complainant's claims, thereby violating complainant's constitutional rights. Complainant maintains that the judge's bias renders him unable to discharge his office and requires his disqualification.

The Judicial Conduct and Disability Act provides a means to review claims relating to a judge's conduct; it does not permit review of a judge's decisions. Allegations that are "[d]irectly related to the merits of a decision or procedural ruling" cannot be raised through a judicial misconduct complaint. 28 U.S.C. § 352(b)(1)(A)(ii). Allowing judicial decisions to be challenged through misconduct proceedings "would raise serious constitutional issues regarding judicial independence under Article III of the Constitution." In re Memorandum of Decision

of Judicial Conference Committee on Judicial Conduct and Disability, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008).


The judicial complaint procedures permit review of a claim that a judicial decision is "the result of an improper motive, e.g., a bribe, ex parte contact, racial or ethnic bias," but only to the extent of challenging the improper motive as opposed to the decision itself. Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Such a charge must be supported by "sufficient evidence to raise an inference that misconduct has occurred." 28 U.S.C. § 352(b)(1)(A)(iii). Disagreement with the judge's rulings and speculation about the judge's motivation are inadequate to state a claim for judicial misconduct or disability. See In re Doe, 2 F.3d 308 (8th Cir. 1993).

The record in complainant's case discloses no bias or prejudice on the part of the district judge. It is apparent from the context in which the term "we" was used by the judge that he was describing a theory of prosecution rather than aligning himself with the government. The judge's opinion denying complainant's 28 U.S.C. § 2255 motion reflects an unbiased consideration of complainant's claims, rather than an effort to mischaracterize those claims and aid the government. The judge's statements from the bench, his written opinions, and his handling of the proceedings offer no support for

complainant's claims of bias and ill motive. Complainant has failed to present any evidence, apart from his disagreement with the judge's rulings, that the judge based his decisions on personal bias or prejudice.

This complaint is, accordingly, dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) & (iii).

IT IS SO ORDERED.



William B. Traxler, Jr.
Chief Judge