

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

In the Matter of a	*	
Judicial Complaint	*	No. 04-15-90006
Under 28 U.S.C. § 351	*	

MEMORANDUM AND ORDER

Complainant brings this judicial complaint, together with supplemental complaints, against a 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).

This is complainant's second judicial complaint arising out of the district judge's orders in a civil action complainant filed against the Social Security Administration. In her first judicial complaint, complainant alleged that the judge engaged in collusion and ex parte communication with government counsel to prevent complainant from filing an amended complaint and that the judge planned to deny complainant her right to file an amended complaint and to dismiss the case without a response

from the government. The first judicial complaint was dismissed because complainant presented no evidence of collusion or ex parte communication. The record, in fact, showed that the district judge allowed the filing of the amended complaint and denied the government's motion to dismiss the original complaint as moot.

Complainant alleges in this complaint and its supplements that the collusion and ex parte communication still exist and are controlling the litigation of her case and preventing an impartial adjudication of her claims. In support of this allegation, complainant claims that referral of the government's motion to dismiss the original complaint to the district judge established that the judge intended to dismiss the case without requiring a response to the amended complaint. Complainant further alleges that the judge's order granting, in part, the government's motion for an extension of time to answer complainant's amended complaint incorrectly stated that the extension was requested prior to expiration of the time for answering complainant's amended complaint. Complainant also alleges that government attorneys are tampering with her computer and placing threats on it and that they are using information retrieved from her computer to their advantage in complainant's pending litigation.

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).

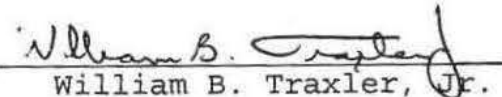
The judicial complaint procedures permit review of a claim that a judicial decision is "the result of an improper motive, e.g., a bribe, ex parte contact, racial or ethnic bias," but only to the extent of challenging the improper motive as opposed to the decision itself. Rule 3(h)(3)(A), Rules for Judicial-Conduct 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); see In re Doe, 2 F.3d 308 (8th Cir. 1993) (judicial complaint process may not be used to pursue speculative claims).

As was the case with her prior judicial complaint, complainant's allegations of collusion and ex parte communication are without the factual support required to state

a claim of judicial misconduct. Referral of the government's motion to dismiss to the district judge does not give rise to an inference that the judge was colluding with government counsel. Further, the complainant's allegation that the judge incorrectly stated that the government moved for an extension within the 14-day period provided by Fed. R. Civ. P. 15(a)(3) misstates the record. The judge instead noted that the government moved for an extension within the period for responding to other motions filed by complainant. More importantly, objections to a judge's orders are properly raised through appeal rather than through a judicial complaint. Finally, complainant's allegations that government attorneys are tampering with her computer, threatening her, and obtaining information to use against her in litigation do not give rise to an inference of judicial misconduct.

Accordingly, this judicial complaint is dismissed as directly related to the merits of the judge's rulings and as failing to present facts supporting a claim of judicial misconduct. 28 U.S.C. § 352(b)(1)(A)(ii) & (iii).

IT IS SO ORDERED.


William B. Traxler, Jr.
Chief Judge