

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

In the Matters of	*	Nos.	04-15-90007
Judicial Complaints	*		04-15-90008
Under 28 U.S.C. § 351	*		

MEMORANDUM AND ORDER

Complainant brings these judicial complaints against a federal district judge and a federal magistrate judge pursuant to the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364.¹ 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 filed a habeas corpus action in the district court. The magistrate judge granted multiple extensions of time to the respondent. Because respondent did not file a response by the original due date, complainant filed a motion for default judgment, asking that he be released from prison immediately.

¹ The judicial complaint also names various state court judges, state courts, state court clerks, and attorneys, but the Judicial Conduct and Disability Act applies only to federal judges. See Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

The magistrate judge recommended that complainant's motion for default judgment be denied and the district judge adopted this recommendation over complainant's objections. The matter is still pending in the district court.

In his judicial complaint, complainant states that he did not receive one of the motions requesting an extension of time, and that the granting of the motion prejudiced him and gave unfair power and advantage to the respondent. Complainant further alleges that he has raised this issue through a motion to recuse the magistrate judge but she has not recused herself.²

Under 28 U.S.C. § 352(b)(1)(A)(ii), claims that are "[d]irectly related to the merits of a decision or procedural ruling" are not subject to review through a complaint of judicial misconduct or disability. To avoid the merits-related bar, a misconduct claim must contain "clear and convincing evidence of an arbitrary and intentional departure from, or willful indifference to prevailing law." In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability, 517 F.3d 558, 562 (U.S. Jud. Conf. 2008).

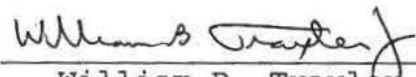
² The judicial complaint also references a civil rights action filed by complainant, which was dismissed without prejudice on recommendation of the magistrate judge, adopted by the district judge over complainant's objections. Complainant does not elaborate on the judicial misconduct arising in this civil action, and the record discloses no basis for any finding of misconduct.

Misconduct may also be based upon a showing that the judge's ruling was motivated by racial or ethnic bias or other improper motive, but the claim must be supported by sufficient evidence to raise an inference that misconduct has occurred and cannot be based on mere speculation. See 28 U.S.C. § 352(b)(1)(A)(iii); Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings; In re Doe, 2 F.3d 308 (8th Cir. 1993) (judicial complaint process may not be used to pursue speculative claims).

Complainant has failed to present, and the record does not disclose, any evidence of willful indifference to prevailing law, racial or ethnic bias, or other improper motive. Complainant's disagreement with the judges' rulings may be raised on appeal, but cannot be raised through complaints of judicial misconduct.

Complainant having failed to provide any evidence of misconduct, these judicial complaints are dismissed as merits-related and lacking in factual support. 28 U.S.C. § 352(b)(1)(A)(ii) & (iii).

IT IS SO ORDERED.



William B. Traxler, Jr.
Chief Judge