

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

In the Matter of a	*	
Judicial Complaint	*	No. 04-15-90143
Under 28 U.S.C. § 351	*	

MEMORANDUM AND ORDER

Complainant brings this complaint under the Judicial Conduct and Disability Act, 28 U.S.C. § 351-364, against the federal district judge who presided over his civil rights action. 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 civil rights action in 2011 against the CEO of a department store, the department store, a state magistrate judge, a deputy sheriff, the sheriff, a Commonwealth's Attorney, and a loss prevention officer for the department store, alleging violations of his constitutional rights and federal law arising from his 2009 arrest. The action was dismissed by the

district judge. Complainant appealed, and the court of appeals affirmed the dismissal on the reasoning of the district judge.

Complainant now files this judicial complaint alleging that the district judge should have recused himself because a magistrate judge with whom the district judge works is the brother of complainant's former defense attorney, who was named as a defendant in complainant's civil rights action. Complainant further alleges that the district judge should have recused himself because he is good friends with another of the defendants named in the civil rights action. Complainant claims that the district judge's decision did not follow Supreme Court or Fourth Circuit precedent and that the judge ruled as he did in order to protect his friend and the magistrate judge's brother.

Misconduct, as defined by the Judicial Conduct and Disability Act, includes "using the judge's office to obtain special treatment for friends or relatives" and "violating other specific, mandatory standards of judicial conduct." Rule 3(h)(1)(A) & (I), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Misconduct does not include "an allegation that is "directly related to the merits of a decision or procedural ruling. An allegation that "calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related." Rule 3(h)(3)(A).

A claim that a judicial decision is "the result of an improper motive, e.g., a bribe, ex parte contact, racial or ethnic bias, or improper conduct" is reviewable, but only to the extent of challenging the improper motive or conduct as opposed to the decision itself. Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. See In re Complaint of Judicial Misconduct, 605 F.3d 1060 (9th Cir. 2010) (failure to recuse may constitute misconduct only if judge failed to recuse for improper reason). Allegations of judicial bias or improper motive "must be dismissed as merits-related when the only support for the allegation of bad acts or motive is the merits of the judge's rulings." In re Doe, 640 F.3d 869, 873 (8th Cir. 2011).

Complainant's allegation that the judge should have recused himself but instead remained with the case to protect the defendants lacks the factual support necessary to state a misconduct claim. According to the district court record, complainant's civil rights complaint did not name the magistrate judge's brother as a defendant or allude to him in any way. In addition, the civil rights complaint did not name as a defendant the person complainant now identifies as the judge's friend.\*

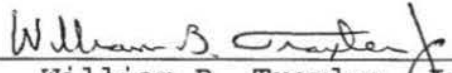
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\* The defendant named in the civil rights complaint and the person referenced in the judicial complaint share the same last name but have different first names.

Complainant has offered no factual support for his claim that the judge remained on the case in order to protect the defendants. Complainant's disagreement with the judge's decision is not evidence that the decision was the result of personal bias on the part of the district judge.

There appearing no factual basis for complainant's allegations of misconduct, this judicial complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) & (iii).

IT IS SO ORDERED.

  
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William B. Traxler, Jr.  
Chief Judge