

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

In the Matter of a	*	
Judicial Complaint	*	No. 04-15-90162
Under 28 U.S.C. § 351	*	

MEMORANDUM AND ORDER

Complainant brings this judicial complaint against a federal circuit 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 filed a judicial complaint against a federal district judge who presided over his multiple civil rights actions. The complaint was dismissed as merits-related and lacking in factual support.

Complainant has now filed a judicial complaint against the circuit judge who dismissed his prior judicial complaint. He alleges that the circuit judge:

- 1) based his decision on improper motives;

- 2) demonstrated bias and should have recused himself based on his friendship with the district judge;
- 3) misapplied the Rules for Judicial-Conduct and Judicial-Disability Proceedings; and
- 4) improperly dismissed the judicial complaint.

To ensure that the judicial complaint procedure is not used to collaterally attack the substance of a judge's ruling, allegations that are "[d]irectly related to the merits of a decision or procedural ruling" are excluded from coverage under the Judicial Conduct and Disability Act. 28 U.S.C. § 352(b)(1)(A)(ii). "Any allegation that calls into question the correctness of an official action of a judge—without more—is merits-related," including "a complaint challenging the correctness of a chief judge's determination to dismiss a prior misconduct complaint." Commentary on Rule 3, Rules for Judicial-Conduct and Judicial-Disability Proceedings, at 5-6. See In re Petition of Doe, 70 F.3d 56, 60 (8th Cir. 1995). Although judicial complaint allegations are cognizable to the extent they challenge a judge's improper motive, as opposed to the decision itself, such allegations must be supported by "sufficient evidence to raise an inference that misconduct has occurred." 28 U.S.C. § 352(b)(1)(A)(iii).

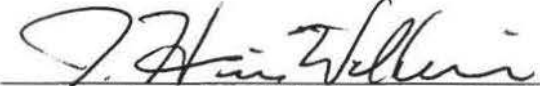
Complainant's allegations that the circuit judge was biased and influenced by improper motives or personal friendship lack

any factual support. The mere allegation of bias or ill motive is insufficient to raise an inference that misconduct has occurred.

Complainant's allegations that the circuit judge failed to follow the governing rules and improperly dismissed the complaint are merits-related claims that may not be pursued through the misconduct process.

Accordingly, this judicial complaint must be dismissed as a merits-related challenge to the circuit judge's prior dismissal order and for failure to present facts supporting a claim of misconduct. 28 U.S.C. § 352(b)(1)(A)(ii) & (iii). Complainant's motion for transfer to another circuit is denied.

IT IS SO ORDERED.


J. Harvie Wilkinson III
Circuit Judge*

* Acting pursuant to Rule 25(f), Rules for Judicial-Conduct and Judicial-Disability Proceedings.