

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

In the Matter of	*	
Judicial Complaints	*	No. 04-18-90023 04-18-90024
Under 28 U.S.C. § 351	*	

MEMORANDUM AND ORDER

Complainant filed 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. The Act provides an administrative remedy for judicial 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 *Bivens* action¹ in the district court, seeking to proceed without prepayment of fees despite the bar imposed by 28 U.S.C. § 1915(g) because he was under imminent danger of serious physical injury. The district judge dismissed the complaint without prejudice after complainant failed to timely respond to the court's order to file the complaint on the court's approved forms. Upon complainant's filing of the complaint on the required form, the district court assigned a new complaint number. The magistrate

¹ *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

judge recommended that complainant be denied leave to proceed without prepayment of fees under 28 U.S.C. § 1915(g) based on complainant's filing history and failure to show that he was under imminent danger of serious physical injury. The district judge adopted this recommendation.² Complainant's appeal of this order was dismissed for failure to prosecute.

Complainant alleged in his judicial complaints that the district judge and magistrate judge:

- Ignored complainant's allegations of imminent danger and delayed his case while he was transferred to different facilities;
- Engaged in ex parte contact with prison staff;
- Conspired with prison staff to interfere with complainant's mail, delaying his return of forms and filing of an appeal; and
- Arbitrarily and intentionally departed from, or showed deliberate indifference to, prevailing law.

In response to further inquiry under 28 U.S.C. § 352, complainant stated that the assistant warden said he often spoke, ex parte, to federal judges. Complainant further stated that his unit counselor told him that the prison was not worried about inmate lawsuits because the administration spoke with federal judges all the time.

² Another *Bivens* action filed by complainant during the same time period and assigned to a different district judge was also dismissed without prejudice for failure to comply with the court's order to file the complaint on the district court's required form.

The assistant warden categorically denied these allegations, stating that he neither knew any federal judges nor had any discussions with them. The unit counselor likewise denied any contact with federal judges or interference with complainant's legal mail.

An allegation that a judge engaged in ex parte contact and conspiracy to impede access to the courts states a claim of misconduct, but such a claim must be supported by "sufficient evidence to raise an inference that misconduct has occurred." 28 U.S.C. § 352(b)(1)(A)(iii). An allegation that a judge ignored complainant's valid legal claims, delayed adjudication of the matter, and wrongly decided the case may also give rise to a misconduct claim, but only if there is evidence of improper motive on the judge's part, Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings, or "clear and convincing evidence of an arbitrary and intentional departure from, or willful indifference to prevailing law." *In re Memorandum of Decision*, 517 F.3d 558, 562 (U.S. Jud. Conf. 2008).

Complainant's only evidence that the judges engaged in conspiracy and ex parte contact with prison officials is his statement that prison officials told him that they talk to federal judges all the time and therefore have nothing to fear from inmate litigation. The prison officials who allegedly made these statements flatly deny, however, having any contact or discussions with federal judges, and complainant does not allege that he has any evidence to the contrary. Absent evidence that prison officials communicated with federal judges, complainant's allegations of conspiracy and ex parte contact must fail.

Complainant's allegations that the judges ignored his imminent danger claims, delayed adjudication, and wrongly decided the case do not include facts that would

establish either an improper motive or willful indifference to prevailing law. The record discloses no judicial delay, and the judges' findings of no imminent danger of serious physical injury disclose no willful indifference to prevailing law. Complainant's disagreement with the judges' decisions does not form the basis for a judicial misconduct complaint. *See In re Doe*, 640 F.3d 869, 873 (8th Cir. Jud. Council 2011).

These complaints are, accordingly, dismissed as merits-related and lacking in factual support for a claim of misconduct. 28 U.S.C. § 352(b)(1)(A)(ii) & (iii).

IT IS SO ORDERED.



Roger L. Gregory
Chief Judge