

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

In the Matter of	*	
Judicial Complaints	*	Nos. 04-18-90113, -90114, & -90115
Under 28 U.S.C. § 351	*	

MEMORANDUM AND ORDER

Complainant brings these judicial complaints against three circuit judges pursuant to the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364, which provides an administrative remedy for judicial conduct that is "prejudicial to the effective and expeditious administration of the business of the courts." 28 U.S.C. § 351(a).

The district court, at the request of the United States, enjoined complainant from acting as a federal income tax preparer on the ground that she had filed falsified federal income tax returns for her customers. In the course of those proceedings, the district court issued a bench warrant for her arrest for civil contempt of court for disregarding court orders. Complainant appealed from the judgment granting the injunction, and the court of appeals issued a decision affirming the district court.

Complainant filed a judicial complaint against each of the three circuit judges who sat on the court of appeals panel that affirmed the district court. Complainant alleges that the district court committed wrongful acts against her while lacking jurisdiction, which resulted in her being imprisoned for three days. Each circuit judge, according to complainant, committed "actionable negligence" in that each circuit judge "had the

power and the public duty to aid in preventing the commission of the wrongful acts . . . by reasonable diligence but neglected to do so.”

Complaint also complains that she was not served with the court of appeals judgment affirming the district court. As a result, when she received the mandate of the court of appeals, the time for filing a petition for rehearing or rehearing en banc had already expired.

Complainant explains that after she contacted the court of appeals, the court of appeals gave her approximately fourteen days to petition for rehearing and rehearing en banc out of time. Her petition for rehearing and rehearing en banc was then denied. She complains that each circuit judge participated in the denial of the petition for rehearing en banc, which participation complainant alleges was improper and a conflict of interest.

Under 28 U.S.C. § 352(b)(1)(A)(ii), claims that are “directly related to the merits of a decision or procedural ruling” are not subject to review through a complaint of judicial misconduct. 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*, 517 F.3d 558, 562 (U.S. Jud. Conf. 2008).

Misconduct may also be based upon a showing that the judge's rulings were 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 records do not disclose, any evidence of willful indifference to prevailing law or other misconduct. Complainant may not pursue her disagreement with the judges' rulings – including decisions whether or not to recuse from a particular matter – through a complaint of judicial misconduct.

If complainant failed to receive proper notice of the court of appeals judgment against her, there is no evidence to suggest that any of the three circuit judges had anything to do with that. Judges ordinarily do not participate in ministerial functions of the clerk's office, such as providing litigants with proper notice of court actions.

Accordingly, 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.

  
Roger L. Gregory  
Chief Judge