

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

In the Matter of a	*	
Judicial Complaint	*	No. 04-19-90151
Under 28 U.S.C. § 351	*	

MEMORANDUM AND ORDER

Complainant brings this judicial complaint against a magistrate judge 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 complainant alleges the judge committed misconduct in an interpleader proceeding instituted by an insurance company in which the complainant was a named defendant. The proceeding involved a dispute between the complainant and a second defendant regarding entitlement to death benefits payable pursuant to a life insurance policy. The following principal allegations of misconduct are asserted in the judicial complaint.

1. The judge “is protecting a [public official] that made a fraudulent document....”
2. On October 24, 2019 the judge told an attorney for the insurance company “to remove [a public official’s] name from all documents.”¹

¹ The complainant asserts that the person she referenced in the judicial complaint is a “Senator” from a specific state, but no proof was offered in support of that assertion.

3. The judge denied the complainant her “right to subpoena anyone in the case” and “told me he was going to [throw] me in jail for 30 days for asking about the subpoenas.”
4. The judge “for two years was trying to make me give [the other defendant] my money.”
5. The judge “released my attorney without asking one question.”
6. The judge “kept seeing fraudulent documents that [the other defendant] produced and he ignored them.”²
7. The insurance company that instituted the interpleader proceeding “hired” the judge.

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.³ The procedure that has been established to consider misconduct complaints “is not designed as a substitute for, or supplement to, appeals or motions for reconsideration.” *In re Memorandum of Decision*, 517 F. 3d 558, 561 (U.S. Jud. Conf. 2008). It would be “entirely contrary” to the purpose of the Judicial Conduct and Disability Act “to use a misconduct proceeding to obtain redress for---or even criticism of---the merits of a decision with which a litigant or misconduct complainant disagrees.” *Id.* To allow “judicial decisions to be questioned in misconduct proceedings would inevitably begin to

² As apparent support for this allegation, the complainant referenced “[m]y policy where my sister sign[ed] my name,” and she asserted that the other defendant “lied” about the residence of the insured, presumably on an insurance form.

³ Similarly, Rule 4(b)(1) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings provides that “[c]ognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse.”

affect the nature of those decisions and would raise serious constitutional issues regarding judicial independence under Article III of the Constitution.” *Id.* Accordingly, 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.” *Id.* at 562.

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 4(b)(1), Rules for Judicial-Conduct and Judicial-Disability Proceedings; *In re Doe*, 2 F. 3d 308 (8th Cir. Jud. Council 1993) (judicial complaint process may not be used to pursue speculative claims). While allegations of judicial bias or other improper motive are not necessarily merits-related, the allegations are to be dismissed as merits-related when the only support for the allegations is the merits of the judge’s rulings. *In re Doe*, 640 F. 3d 869, 873 (8th Cir. Jud. Council 2011).

In determining what action to take on a judicial complaint, the chief judge may conduct a limited inquiry, including obtaining and reviewing transcripts and other relevant documents. *See* Rule 11(b), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

At the outset, the complainant’s allegation regarding the attorney’s withdrawal and the allegation that the judge “ignored” fraudulent documents are merits-related and not subject to review in a judicial complaint alleging misconduct.

The case record indicates that a motion to withdraw from the case was filed. The complainant's then-attorney asserted, among other things, that the "client insists on presenting a claim or defense that is not warranted ..." and that the attorney and the client "have irreconcilable differences." The judge, through court order, allowed the attorney to withdraw.

At the time the complainant filed the judicial complaint, an "Order Approving Settlement" had been entered in the litigation. The order indicated that the complainant had agreed to the settlement. A review of the case record indicates the case was never brought to trial, and multiple motions for summary judgment filed by the complainant, or on her behalf, had been denied by the judge. The judge's decisions not to rule in the complainant's favor, and not to determine as true, in advance of trial, the complainant's allegations about fraudulent documents, or lies perpetrated by others, is not subject to review in a judicial misconduct proceeding.

The complainant's allegations that the judge "is protecting" a public official; "for two years was trying to make me give [the other defendant] my money;" and was "hired" by the insurance company are conclusory, speculative, unsupported, and do not give rise to an inference of misconduct on the part of the judge. The complainant provided no evidence in support of these allegations.

In response to a limited inquiry, the judge addressed the complainant's allegation that on "October 24, 2019, [the judge] told [the insurance company] attorney to remove [a public official's] name from all documents." The judge stated:

I have never made such a statement to anyone. The docket report will reflect that I never entered any orders sealing or redacting any pleadings, documents, or parts thereof in this case other than the transcript of the final hearing which contained settlement negotiations.

The case docket is consistent with the judge's response. In addition, a review of the case docket and case record offers multiple instances in which the person's name appears, including in an exhibit forwarded with the insurance company's response to a renewed motion for summary judgment; a letter from the complainant dated July 6, 2019 and in a document forwarded with that letter; the answer and counterclaims of the second defendant; and the proposed pretrial order of the second defendant. Accordingly, the complainant's allegation lacks evidentiary support and is subject to dismissal on that ground.

With regard to the complainant's allegation that the judge denied her the "right to subpoena anyone in the case," the case record indicates the complainant requested that a subpoena issue. In a written order, the judge denied "the request without prejudice to being re-filed along with the proposed subpoenas that Defendant wishes to have served." The transcript of the final pretrial conference confirms that the complainant was not denied the right to have subpoenas issue, provided the correct procedure was followed:

[COMPLAINANT]: I don't understand what's going on. You denied a subpoena in reference to – I don't understand.

THE COURT: Well, the reason for that is, ma'am, that's a proper motion for you to make, but you have to submit the proposed subpoenas.

[COMPLAINANT]: What is he talking about?

THE COURT: And you could talk to the clerk about that.

The case record and the judge's response indicate the judge made a decision regarding the issuance of a subpoena that did not amount to a prohibition on the future issuance of subpoenas, as the complainant alleges. Accordingly, the complainant's allegation lacks evidentiary support and is subject to dismissal on that ground.

Finally, in response to a limited inquiry, the judge addressed the complainant's allegation that the judge "told me he was going to [throw] me in jail for 30 days for asking about the subpoenas." The judge stated:

I have never threatened to incarcerate [the complainant] for anything related to subpoenas. The only reference to thirty days incarceration came during the final hearing when I admonished her that her disruptive behavior could constitute contempt of court.

The transcript of the final pretrial conference indicates that the judge issued the following admonishment to the complainant:

THE COURT: If you interrupt me again, you're going to jail.

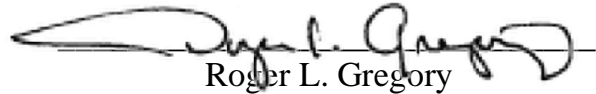
Now, I want you to know I'm serious. And when we have this trial, if you want to argue with me, interrupt me, interrupt whoever's speaking, I'm telling you I can hold you in contempt. Contempt is 30 days in custody. I don't want to do that. I want to have a fair trial, but I'm not going to have you interrupting people and behaving the way that you're behaving today, particularly in front of a jury. I'm not going to have it.

The judge's admonishment to the complainant concerning disruptive behavior constitutes a decision made by the judge during the course of a judicial proceeding that is not subject to review through a judicial complaint alleging misconduct.

The complainant has failed to present, and the records do not disclose, evidence of willful indifference to prevailing law, bias, or other improper motive or misconduct on the part of the judge.

Accordingly, this judicial complaint is dismissed as merits-related and lacking in evidentiary support. 28 U.S.C. § 352(b)(1)(A)(ii) & (iii).

IT IS SO ORDERED.



Roger L. Gregory
Chief Judge