

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

In the Matter of a

\*

No. 04-19-90161

Judicial Complaint

\*

Under 28 U.S.C. § 351

\*

MEMORANDUM AND ORDER

Complainant brings this judicial complaint against a district 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).

Complainant brought a civil action in federal district court alleging breach of contract by his former employer. Complainant sought *in forma pauperis* status. The district judge denied *in forma pauperis* status, ruling that complainant had previously been enjoined by the district court for a period of two years from proceeding *in forma pauperis* in that district (except in a habeas corpus petition involving claims of imminent danger of serious bodily injury). The district judge dismissed the case without prejudice for lack of federal subject-matter jurisdiction, noting the lack of a federal question and the apparent fact that both complainant and the defendant were residents of the same state.

In his judicial complaint, complainant essentially alleges that the district judge's rulings were improper and wrong. He appears to contend that he was denied due process by being given no opportunity to respond to the denial of *in forma pauperis* status; instead,

the case was immediately dismissed without prejudice. He also appears to allege that he was made a “victim” on account of his *pro se* status.

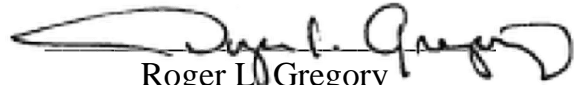
Under 28 U.S.C. § 352(b)(1)(A)(ii), claims that are “directly related to the merits of a decision or procedural ruling” are not subject to review through a complaint of judicial misconduct. To avoid the merits-related bar, a misconduct claim must contain "clear and convincing evidence of an arbitrary 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 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); *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 improper motive, bias against complainant or against *pro se* litigants, or other misconduct. The district judge’s dismissal without prejudice for lack of federal subject-matter jurisdiction afforded complainant a full opportunity to come forward with allegations that would establish federal subject-matter jurisdiction. Complainant may not pursue his disagreement with the judge’s rulings through a complaint of judicial misconduct.

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

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Roger L. Gregory". The signature is written in a cursive, flowing style with a large, sweeping initial "R".

Roger L. Gregory  
Chief Judge