

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

In the Matter of a

*

No. 04-20-90035

Judicial Complaint

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Under 28 U.S.C. § 351

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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).

Complainant brought a civil action in state court against a state human affairs commission. That action included a claim under 42 U.S.C. § 1983. The defendant removed the action to the federal district court. In his action, complainant alleged that after he suffered a work injury on his job that made him unable to work, he brought claims of disability discrimination and retaliation by his employer to the state human affairs commission. His lawsuit alleged that the commission did not deal properly with his claims against his employer, and also improperly denied him workers' compensation benefits. In a court-sponsored mediation, complainant and the commission failed to come to an agreement on complainant's employment discrimination charges against his employer. After the commission filed a motion to dismiss complainant's § 1983 claim, the magistrate judge issued a report and recommendation recommending that the § 1983 claim be dismissed on the ground that the state commission enjoyed immunity from suit in federal

court, and that the court decline to exercise supplemental jurisdiction over any remaining state-law claim and remand any remaining claim to state court. A district judge adopted the magistrate judge's report and recommendation, dismissed the § 1983 claim, and remanded the rest of the case to state court. Complainant appealed, and the court of appeals affirmed the district judge's ruling.

In his judicial complaint, complainant alleges that when the magistrate judge issued "mediation requirements" governing mediation in the case, complainant signed the mediation agreement, but the commission did not respond. Subsequently, the magistrate judge failed to enforce the "mediation requirements," suspended the mediation, and granted the commission's motion to dismiss. These actions, complainant alleges, violated his rights.

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).

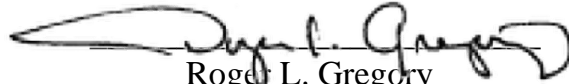
Misconduct may also be based upon a showing that the judge's rulings were motivated by bias or other improper motive, but the claim must be supported by sufficient evidence to raise an inference that misconduct has occurred and cannot be based on mere

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, bad faith, or other misconduct. Complainant may not pursue his disagreement with the magistrate judge's report and recommendation, or with the magistrate judge's handling of the court-sponsored mediation process, 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.


Roger L. Gregory
Chief Judge