

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

In the Matter of a \*  
Judicial Complaint \* No. 04-22-90114  
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. The Act 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 was indicted on multiple felony charges. At the request of prosecutors, the United States Marshals Service (USMS) imposed restrictions during pretrial confinement that prohibited complainant from communicating with anyone other than his attorney. A federal magistrate judge denied complainant’s motion to lift the restrictions, and the subject district judge denied complainant’s motion for reconsideration.

The matter proceeded to a jury trial. During a break in complainant’s direct testimony, complainant’s attorney sought an ex parte meeting with the subject judge. In the meeting, the attorney questioned whether he could continue to represent complainant. The subject judge concluded that, under the circumstances presented, counsel was not required to withdraw from representation. The transcript of the meeting was placed under seal. The jury later returned a verdict of guilty. The subject judge sentenced complainant to a total of 411 months of imprisonment.

In his judicial complaint, complainant alleges that the subject judge “allowed” the prosecutors “to file false report[s]” with the USMS, “knowing it was wrong.” Complainant next contends that the subject judge failed to “stop[] the trial” when a witness gave “prejudicial” and “inflammatory testimony.” He also claims that the subject judge’s transcribed meeting with defense counsel was an improper ex parte communication. Finally, complainant generally alleges that “[t]his case is full of racism,” the subject judge “made improper comments” at sentencing, and a “miscarriage of justice” occurred as the subject judge sentenced him “for a crime [he] didn’t commit.”

Claims that are “directly related to the merits of a decision or procedural ruling” or “lacking sufficient evidence to raise an inference that misconduct has occurred” are not subject to review through a complaint of judicial misconduct. 28 U.S.C. § 352(b)(1)(A)(ii), (iii). 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 affect the nature of those decisions and would raise serious constitutional issues regarding judicial independence under Article III of the Constitution.” *Id.*

Although allegations of judicial bias or other improper motives are not necessarily merits-related, such claims 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, 311 (8th Cir. Jud. Council 1993) (providing that judicial complaint process may not be used to pursue speculative claims). The allegations are “dismissed as merits-related when the only support for the allegation[s] . . . is the merits of the judge’s rulings.” *In re Doe*, 640 F.3d 869, 873 (8th Cir. Jud. Council 2011).

Complainant’s allegation that the subject judge knowingly allowed prosecutors to wrongfully seek restrictions on complainant’s communication during his pretrial confinement is dismissed for lack of sufficient evidence pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). To the extent that complainant challenges the subject judge’s order denying reconsideration of his motion to lift the restrictions, his claim is dismissed on the ground that it is directly related to the merits of the subject judge’s ruling. Complainant’s claim that the subject judge committed misconduct by failing to stop the trial after a witness provided “prejudicial” and “inflammatory testimony” is likewise dismissed as merits-related.

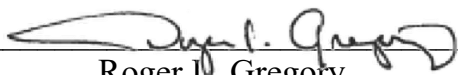
Turning to complainant’s claim that the subject judge engaged in an improper ex parte communication, the record reveals that trial counsel requested the ex parte proceeding for the purpose of determining whether he could ethically continue to represent complainant. Motions to withdraw and similar matters are often considered ex parte, particularly where, as here, the information revealed would be detrimental if disclosed to opposing counsel. This claim is dismissed as neither the complaint nor the record presents

“sufficient evidence to raise an inference that misconduct occurred.” 28 U.S.C. § 352(b)(1)(A)(iii).

Finally, complainant fails to identify any “improper comments” made by the subject judge or to provide any specific evidence to support his allegations of racism. Furthermore, a review of the sentencing transcript fails to reveal any improper remarks by the subject judge. These allegations are, therefore, dismissed as lacking in evidentiary support pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). *See In re Complaint of Jud. Misconduct*, 552 F.3d 1146, 1147 (9th Cir. Jud. Council 2009) (dismissing allegations of judicial bias, discrimination, and conspiracy on the ground that complainant failed to provide “objectively verifiable proof” to “raise an inference that misconduct occurred”).

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

IT IS SO ORDERED.

  
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Roger L. Gregory  
Chief Judge