

Complainant now alleges in his judicial complaint that his son had worked for the district judge seven years prior to initiation of the criminal proceedings. Complainant further alleges that his son had, while so employed, shared insights into complainant's private life that caused the judge to treat complainant in a biased, hostile and egregious manner and predisposed the judge to hold complainant to a higher standard and impose a harsher sentence. Complainant alleges that this predisposition is most clearly demonstrated by the judge's statement during the proceedings that complainant "should be shot."

Complainant also alleges that he asked his attorney to move to recuse the judge but his attorney declined, stating that the judge would deny the motion and resent its filing. Though no motion was filed, complainant maintains that the judge should have voluntarily recused himself under the circumstances.

Complainant also alleges that his son and the judge had improper discussions about complainant's case. He submits in support of this allegation the judge's response to a letter from another of complainant's sons. In that response, the judge thanked the son for his letter but stated he was without authority to grant the requested relief and that the Bureau of Prisons was the responsible authority.

The Judicial Conduct and Disability Act provides a means to review claims relating to a judge's conduct, including "having improper discussions with parties or counsel for one side in a case," and "treating litigants, attorneys, or others in a demonstrably egregious and hostile manner." Rule 3(h)(1)(c) & (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

The Act does not permit review of a judge's decisions. Allegations that are "[d]irectly related to the merits of a decision or procedural ruling," 28 U.S.C. § 352(b)(1)(A)(ii), cannot be reviewed except to the extent they allege that a judicial decision was "the result of an improper motive, e.g., a bribe, ex parte contact, racial or ethnic bias," Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Claims of misconduct must be supported by "sufficient evidence to raise an inference that misconduct has occurred," 28 U.S.C. § 352(b)(1)(A)(iii), and cannot be based solely on the merits of the judge's rulings, In re Doe, 640 F.3d 869, 873 (8th Cir. 2011).

Complainant's allegation that the judge treated him in a biased, egregious, and hostile manner is refuted by the transcript of complainant's plea hearing and sentencing, during

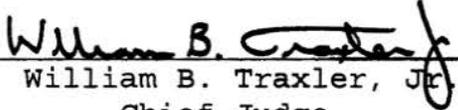
which the judge afforded complainant a full opportunity to be heard and treated all participants fairly and courteously. Contrary to complainant's allegations, the judge did not suggest that complainant "should be shot." Complainant's dissatisfaction with the judge's view of the case and the sentence imposed is not evidence of judicial bias or hostility. See In re Doe, 640 F.3d at 873.

The judge's failure to voluntarily recuse himself is also directly related to the merits of the judge's rulings. See Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings ("An allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related."). In any event, the judge's employment of complainant's son seven years before being assigned to complainant's case is too remote a connection to suggest bias on the part of the judge.

The correspondence alleged by complainant to constitute improper discussion between the judge and complainant's son also fails to support a claim of misconduct. The judge's response to complainant's son that the Bureau of Prisons now had authority over the complainant did not address substantive matters or give any party a procedural, tactical, or substantive advantage, and therefore did not constitute improper ex parte contact. See Canon 3A(4)(b), Code of Conduct for United States Judges.

Accordingly, this complaint is dismissed as directly related to the merits of the judge's rulings and as lacking in factual support for a claim of misconduct. 28 U.S.C. § 352(b)(1)(A)(ii) & (iii).

IT IS SO ORDERED.



William B. Traxler, Jr.
Chief Judge