

at complainant's trial, complainant supplemented his initial complaint with an allegation that the transcript was altered to protect the judge.¹

Complainant's initial complaint was dismissed as directly related to the merits of the judge's rulings and as failing to present evidence of judicial misconduct. See 28 U.S.C. § 352(b)(1)(A)(ii) & (iii). His claim regarding alteration of the transcript was rejected for lack of evidence that the judge

¹ Complainant's supplemental complaint in No. 04-15-90082 alleged as follows:

The transcript of my mock trial has been altered. Almost all of the inflammatory statements and testimony have been removed, [a]s well, as a great deal of the exculpatory statements. They have painstakingly removed testimony, and altered some, while attempting to maintain the facade of congruency in the examinations. They have altered the testimony and statements of their own witnesses. And they have removed large swathes of the inflammatory testimony elicited from their alleged victims, [a]ll of it of course being so obviously prejudicial,* that [the judge] would have to had been asleep, to allow it.
. . .

I know my words and allegations alone mean nothing, but your honor, in this situation, I can prove to you unequivocally, that they have altered my transcript, to protect [the judge], and deny me the opportunity to obtain justice.

(Supplemental complaint, filed 11/17/2015, at 3)

participated in the alleged alteration and because any challenge to the accuracy of the transcript should be presented in the case itself, in the district court or on appeal.²

Current Judicial Complaint No. 04-16-90013

In his current judicial complaint, complainant alleges that the district judge ordered the alteration of the transcript.³ He references the fact that the judge was served with the first judicial complaint, which included allegations that the judge threatened to have complainant removed from the courtroom if he did not "shut up" and that the judge took no action to restrict the prosecution's presentation of illegal evidence, including inadmissible evidence of "other bad acts." The absence of these matters from the transcript prepared after the judge had been served with the first judicial complaint establishes, in

² Complainant's fourth court-appointed attorney filed a motion to stay district court proceedings pending resolution of issues regarding the accuracy of the transcript. Those issues have not yet been addressed, however, pending disposition of counsel's subsequent motion to withdraw from further representation.

³ Although this claim is similar to that raised in the supplemental complaint considered in No. 04-15-90082, complainant maintains that review is proper because the claim is supported by additional evidence. See Rule 11(c)(2), Rules for Judicial-Conduct and Judicial-Disability Proceedings ("A complaint must not be dismissed solely because it repeats allegations of a previously dismissed complaint if it also contains material information not previously considered and does not constitute harassment of the subject judge.")

complainant's view, that the judge ordered the alterations to conceal misconduct and avoid reversal on appeal. As further evidence, complainant states that during a break in the proceedings, he overheard an audio-feed of a conversation between the prosecutors at which they were joking about the one-sided nature of the judge's rulings.

The evidence presented by complainant fails to give rise to an inference of judicial misconduct. See 28 U.S.C. § 352(b)(1)(A)(iii). Neither the judge's knowledge of complainant's first judicial complaint allegations nor the alleged conversation between the prosecutors is evidence that the judge ordered alterations in complainant's trial transcript.

According to his own allegations, complainant attempted to interpose multiple objections at trial, despite the fact that he was not representing himself and any objections had to be presented by counsel. In the face of complainant's repeated interruptions, action was required by the presiding judge to control the proceedings, ensure the orderly presentation of testimony, and preserve courtroom decorum.

The judge's alleged direction to complainant to keep his mouth shut or suffer removal was directly related to the proceeding before the judge and therefore presumptively excluded from coverage under the Judicial Conduct and Disability Act. See Commentary on Rule 3, Rules for Judicial-Conduct and

Judicial-Disability Proceedings, at 6 ("If the judge's language was relevant to the case at hand . . . then the judge's choice of language is presumptively merits-related and excluded, absent evidence apart from the ruling itself suggesting an improper motive."). In addition, the language allegedly used by the judge to control complainant's repeated interruptions was not, in the circumstances, demonstrably egregious or hostile. See Rule 3(h)(1)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings (defining misconduct to include "treating litigants, attorneys, or others in a demonstrably egregious and hostile manner"). Had the interchange, as described by complainant, been included in the transcript of witness testimony, it would not have supported complainant's charge of misconduct. The judge's prior notice of the allegation does not support an inference that the judge ordered the transcript altered to conceal misconduct.

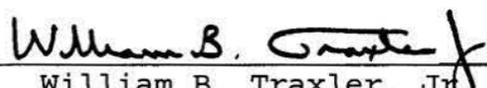
Complainant also alleges that "other bad act" evidence was presented at trial but not included in the trial transcript. Again, complainant speculates that the judge must have ordered its removal to conceal the fact that he allowed this evidence and to avoid reversal on appeal.

The accuracy of the transcript of witness testimony is a matter to be raised in complainant's criminal and appellate proceedings. Complainant's speculative assertion that the judge

must have ordered testimony removed from the transcript is not a sufficient evidentiary basis for transforming a challenge to the accuracy of the transcript into a judicial misconduct complaint. See In re Doe, 2 F.3d 308 (8th Cir. 1993) (allegations of conspiracy and cover-up must be dismissed in the absence of evidence).

Complainant's judicial complaint is, accordingly dismissed as failing to present sufficient evidence to raise an inference that misconduct has occurred. 28 U.S.C. § 352(b)(1)(A)(iii).

IT IS SO ORDERED.



William B. Traxler, Jr.
Chief Judge