

district judge." (Complaint at 1). Complainants point to the judge's statements during the confirmation process, which they allege show that the judge had less criminal law experience than a public defender would have after being on the job for 90 days.

Complainants challenge the judge's integrity based on reports that she was allegedly involved in an affair with a married man prior to her nomination to the federal bench. Complainants also claim to have heard that the judge has regular ex parte communications that she is not supposed to have.

Complainants attach as an exhibit to their complaint a copy of a letter they sent the judge following their son's sentencing in which they argue that treatment rather than lengthy incarceration is the appropriate sentence and in which they complain that the judge laughed or smirked when describing their son's appeal process.

"The judicial branch has no constitutional role in considering the fitness of an individual to assume judicial office." In re Complaint of Judicial Misconduct, 570 F.3d 1144, 1144 (9th Cir. 2009) (quoting In re Charge of Judicial Misconduct, No. 83-8037 (9th Cir. 1986)). The judiciary's role in reviewing post-appointment conduct is separate and distinct from that of the President and the Senate in the appointment process. Id. Complainants' challenges to the judge's integrity,

experience, and morals prior to her appointment to office are outside the scope of the judicial complaint process.

Complainants' claim of ex parte communication by the judge fails to offer any specifics regarding the substance or circumstances of the communication. Conclusory allegations of misconduct are subject to dismissal under the Act as "lacking sufficient evidence to raise an inference that misconduct has occurred." 28 U.S.C. § 352(b)(1)(A)(iii); see In re Doe, 2 F.3d 308 (8th Cir. 1993).

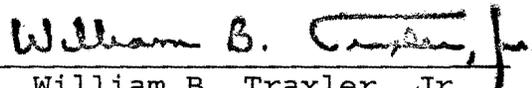
Complainants' allegation that the judge made a gross error of judgment in sentencing their son to 135 months is a challenge to the merits of the judge's sentencing decision. Merits-related challenges are barred from review under the Act. See 28 U.S.C. § 352(b)(1)(A)(ii) (barring review of claims that are "directly related to the merits of a decision or procedural ruling"); In re Memorandum of Decision, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008) (Allowing judicial decisions to be challenged through misconduct proceedings "would raise serious constitutional issues regarding judicial independence under Article III of the Constitution.").

Complainants' allegation that the judge laughed or smirked when informing their son regarding the appeal process is considered under Rule 3(h)(1)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings, which defines misconduct to

include "treating litigants, attorneys, or others in a demonstrably egregious and hostile manner." In informing the defendant regarding the appeal process, the judge stated: "Sir, you have waived your right to an appeal. You, however, have 14 days from the date of entry of judgment to file a limited appeal as to claims of ineffective assistance of counsel or prosecutorial misconduct only. I wish you the best in the future. Thank you." (Sentencing Transcript at 11). Although the transcript does not indicate the judge's expression, the complainants' perception that the judge laughed or smirked while making this statement fails to show egregious and hostile treatment where the judge was courteous in describing the appeal process and where the transcripts of the plea and sentencing proceedings contain no evidence of mistreatment.

Accordingly, this judicial complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A) as not in conformity with § 351(a), as directly related to the merits of the judge's rulings, and as lacking in factual support for a claim of misconduct.

IT IS SO ORDERED.



William B. Traxler, Jr.
Chief Judge