

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

In the Matters of a	*	
Judicial Complaint	*	No. 04-15-90005
Under 28 U.S.C. § 351	*	

MEMORANDUM AND ORDER

Complainant brings this judicial complaint against a federal district judge pursuant to the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364. The Act provides an administrative remedy for "conduct prejudicial to the effective and expeditious administration of the business of the courts" and for judicial inability to "discharge all the duties of office by reason of mental or physical disability." 28 U.S.C. § 351(a).

Complainant pled guilty to use of unauthorized access devices and aggravated identity theft and was sentenced to 108 months' imprisonment. His appeal from that judgment was dismissed by the court of appeals. Complainant has filed a motion to vacate his conviction and sentence under 28 U.S.C. § 2255, which is currently pending in the district court.

Complainant alleges in his judicial complaint that the district judge treated him in a rude and abusive manner and

failed to perform his duties in accordance with the law. Complainant further contends that the judge consistently ruled against complainant, demonstrating his ongoing prejudice and bias, and decided complainant's case before the case was heard. He alleges that his constitutional rights have been violated and he has been subjected to discrimination.

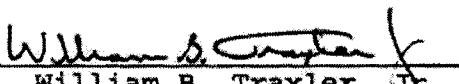
The Judicial Conduct and Disability Act provides a means to review claims relating to a judge's conduct; it does not permit review of a judge's decisions. Allegations that are "[d]irectly related to the merits of a decision or procedural ruling" cannot be raised through a judicial misconduct complaint. 28 U.S.C. § 352(b)(1)(A)(ii). Allowing judicial decisions to be challenged through misconduct proceedings "would raise serious constitutional issues regarding judicial independence under Article III of the Constitution." In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008).

The judicial complaint procedures permit review of a claim that a judicial decision is "the result of an improper motive, e.g., a bribe, ex parte contact, racial or ethnic bias," but only to the extent of challenging the improper motive as opposed to the decision itself. Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Such a charge must be supported by "sufficient evidence to raise an inference that

findings deviated from the Sentencing Guidelines and that the findings were based on the judge's prejudice against complainant for refusing to cooperate with the prosecution. The judge did note at sentencing that complainant had benefited from the prosecutor's request for a 40% reduction in connection with his previous sentencing and that the payback was complainant's involvement in new offenses shortly after his release from prison and while still under supervision. Judicial comments related to the sentencing proceedings cannot support a claim of misconduct. See In re Lauer, 788 F.2d 135 (8th Cir. 1985) (judge's comments during sentence that were related to the merits and reasons for the sentence imposed cannot serve as basis for a misconduct complaint).

Complainant has failed to present anything other than his disagreement with the judge's rulings and his speculation regarding the judge's motives to support his claim of misconduct. This complaint is, accordingly, dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) & (iii).

IT IS SO ORDERED.


William B. Traxler, Jr.
Chief Judge