

THE JUDICIAL COUNCIL OF THE SEVENTH CIRCUIT
219 South Dearborn Street
Chicago, Illinois 60604

October 24, 2008

FRANK H. EASTERBROOK
Chief Judge

Nos. 07-08-90098 & -90099

IN RE COMPLAINT AGAINST TWO JUDICIAL OFFICERS

MEMORANDUM

Complainant, a federal prisoner, believes that two federal judges engaged in misconduct by not giving him a lower sentence.

The first judge imposed the initial sentence and played no role in the resentencing. The second judge reduced complainant's sentence on the prosecutor's motion under Fed. R. Crim. P. 35(b). Although the prosecutor recommended the equivalent of a ten-level reduction (as computed under the Sentencing Guidelines), the judge concluded that a substantially smaller reduction (equivalent to three levels) was appropriate.

Any complaint that is "directly related to the merits of a decision or procedural ruling" must be dismissed. 28 U.S.C. §352(b)(1)(A)(ii). The allegations of this complaint fit that description. "Any allegation that calls into question the correctness of an official action of a judge ... is merits related." Standard 2 for Assessing Compliance with the Act, *Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice* 145 (2006). Deciding how much to reduce a sentence as a reward for assisting prosecutors is a judicial decision within the scope of §352(b)(1)(A)(ii).

The appropriate way to obtain review of that decision is by appeal rather than by a complaint under the 1980 Act. An appeal has been filed and is awaiting decision. A complaint under the 1980 Act will not accelerate or affect that appeal's disposition.