

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

October 10, 2013

Chief Judge Diane P. Wood

No. 07-13-90080

IN RE COMPLAINT AGAINST A JUDGE

MEMORANDUM

Complainant has filed a judicial misconduct complaint against a judge assigned to his case. The complaint is that the judge had an *ex parte* discussion with the government and the government's cooperating witness and this denied complainant a fair and impartial trial. Complainant makes a lot out of an alleged statement that the judge made to the cooperating witness during the trial. That statement, however, does not appear in the transcript. The supposed language was in reference to the judge's authority to grant or deny motions to reduce sentences based on cooperation. Even if the judge had made the statement (and there is no evidence of that other than complainant's statement that it occurred), it would not be misconduct for the judge to advise the cooperating witness that the judge ultimately decides motions to reduce sentences. I dismiss the complaint under 28 U.S.C. §352(b)(1)(A)(iii) because the complaint lacks sufficient evidence to raise an inference that misconduct has occurred.

In addition to dismissing the complaint pursuant to 28 U.S.C. §352(b)(1)(A)(iii), I also dismiss it under §352(b)(1)(A)(ii). Complainant alleges that he was denied a fair and impartial trial. 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). See also Rule 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. "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).

Therefore this complaint is dismissed pursuant to 28 U.S.C. §352(b)(1)(A)(ii) and (iii).