

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

October 11, 2017

Chief Judge Diane P. Wood

No. 07-17-90045

IN RE COMPLAINT AGAINST A JUDGE

MEMORANDUM

Complainant has filed a judicial misconduct complaint against the judge assigned to his criminal proceedings, which took place more than 20 years ago. The complaint asserts that the judge gave his permission for the prosecutors to use a court reporter to leak to the public a fictitious grand jury transcript, in which a witness was identified. The goal of the leak was to gather evidence for the proceeding against the complainant. Complainant asserts that the alleged leak violated Federal Rule of Criminal Procedure 6(e)(2), which governs the secrecy of grand jury materials. The fictitious transcript does not qualify as "grand jury matter," however, because it was fake. To the extent that the complaint raises issues about the use of deceit or fictitious materials, that goes to the merits of the proceeding and thus falls outside the scope of the Judicial-Conduct and Judicial-Disability process.

Complainant also argues that the judge engaged in misconduct when he failed to recuse pursuant to 28 U.S.C. § 455 from the complainant's criminal trial. Once again, the judge's alleged role in the leak of the fictitious transcript is a question involving the merits of the procedures used and thus not a matter for the misconduct process. More generally, a complaint that the judge should have recused himself is "directly related to the merits of a decision or procedural ruling" and thus must be dismissed. 28 U.S.C. § 352(b)(1)(A)(ii); Rules for Judicial-Conduct and Judicial-Disability Proceedings, Rule 11(c)(1)(B). "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).

This complaint is dismissed pursuant to 28 U.S.C. § 353(b)(1)(A)(ii).