

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

April 23, 2012

FRANK H. EASTERBROOK
Chief Judge

No. 07-12-90012

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant, the defendant in two related criminal prosecutions, is a federal prisoner. He contends that the district judge was medically disabled and committed misconduct during the sentencing proceedings.

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). Some allegations of this complaint fit that description. To the extent that complainant disagrees with the sentence imposed, or the judge's stated reasons for selecting the length of imprisonment, the remedy was appeal rather than a complaint under the 1980 Act. Complainant appealed in each case but voluntarily dismissed each appeal. The 1980 Act does not provide an alternative forum for a litigant who now regrets that decision.

Complainant asserts that, during the two hearings held to receive evidence pertinent to his sentence, and a third hearing at which the judge announced his decision, the judge "was irrational, made multiple contradictory statements, fell asleep in [sic] the bench and had to be woken up by the bailiff, yelled at my attorney" and was generally "loud, belligerent [sic], and derogatory". These allegations are outside the scope of §352(b)(1)(A)(ii). I therefore conducted a limited inquiry. See Rule 11(b) of the Rules for

Judicial-Conduct and Judicial-Disability Proceedings. I asked the subject judge to send me transcripts of the three hearings and identify anyone who would know whether he was "loud" (or any other issue that could not be ascertained from the transcripts). I also asked whether any of the medication he was taking could have affected his behavior. At the time of the first hearing, the judge was taking medication for a persistent infection; between the first and second hearings, one of the judge's legs was amputated below the knee, and he took medication after that surgery.

The judge replied that his physicians had not prescribed drugs that affect cognition. The judge sent me transcripts and audio recordings of the hearings, so that I could evaluate for myself his demeanor and tone of voice, and whether the proceedings had to be halted to awaken the judge. I have reviewed these transcripts and recordings. They conclusively refute complainant's allegations. The judge was courteous and acted with complete propriety. There is no indication of sleeping or a need for court personnel to rouse the judge. The complaint therefore is dismissed.

Complainant misunderstands some of what happened. He contends, for example, that the judge contradicted himself by saying at one time that the evidence does not show that complainant possessed guns, while later finding that complainant did (and enhancing his sentence for this reason). There is no contradiction, however; between the judge's first statement and the imposition of sentence, additional evidence was received. The shortcoming the judge perceived during one hearing was addressed in the next.

Complainant also misunderstands the judge's medical condition. He believes that the amputation was caused by gangrene, which complainant believes affected the judge's brain. I put to one side complainant's unsupported belief about the cognitive effects of gangrene. The judge did not suffer from gangrene. He had a persistent infection, and the amputation was performed to prevent the onset of gangrene. There is accordingly no reason to think that the judge was or is medically unfit for duty.