

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

April 7, 2008

FRANK H. EASTERBROOK
Chief Judge

No. 08-7-352-17

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant is the plaintiff in a civil action recently concluded in a district court. He believes that the judge should have recused himself and committed misconduct not only by his handling of the litigation but also by requesting extra security when complainant was in the courthouse.

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). “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). Most allegations of the complaint fit that description. Both substantive and procedural issues concerning the litigation are reviewed in the court of appeals, not the Judicial Council, which is an administrative body.

Complainant’s belief that the judge should have recused himself also is within this rule. A judge’s decision to continue presiding is “directly related to the merits of a ... procedural ruling” unless the judge knows that he is disqualified. See *id.* at 146. A complaint under the 1980 Act is not an appropriate means to express disagreement with language in the district judge’s opinion or bypass the review available by mandamus or appeal. That complainant has asked for a judge’s recusal and impeachment on prior occasions does not oblige a judge to recuse himself; if it did, then any litigant would

have a veto power over which judge is assigned to the case. Some states allow a litigant to remove the first judge assigned to a proceeding; federal courts do not.

The district judge's request that security officials supervise complainant while in the courthouse is not related to the merits of any decision, and is not covered by subsection (b)(1)(A)(ii), but the action of which complainant disapproves is not a form of judicial misconduct, so this aspect of the complaint is dismissed under subsection (b)(1)(A)(i). The judge stated: "plaintiff's conduct is considered by the court to be aberrant and potentially a security concern." Federal judges have been assassinated by disgruntled litigants. Judges are entitled to take steps that enhance security while respecting everyone's freedom. The judge's request that deputy marshals or court security officers accompany complainant in the courthouse may be unwelcome to him, but it does not deny him access to the court and does not affect his freedom to do as he pleases when away from the courthouse.