

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

September 21, 2007

FRANK H. EASTERBROOK
Chief Judge

No. 07-7-352-36

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

According to the complaint, the district judge presiding in a criminal case must have accepted a bribe, or entered into a conspiracy, to make decisions adverse to the beneficiary of a trust.

A criminal defendant holds a life interest in a charitable trust. The United States seeks to reach the value of that interest—either to forfeit it directly or to collect each payment as it comes due. Litigation about these competing claims to the value of the life interest has proceeded in two district courts. According to complainant’s narration, one district judge concluded that the criminal defendant retains the beneficial interest, but the district judge complained of in this case had decided otherwise and “conspired” with the prosecutor and the trustee to prevent the defendant from enjoying the life interest under the trust.

It is apparent from this description that the complaint comes within 28 U.S.C. §352(b)(1)(A)(ii), which provides that the Judicial Conduct and Disability Act of 1980 does not apply to the substance of a judge’s official actions. Section 352(b)(1)(A)(ii) says that any complaint “directly related to the merits of a decision or procedural ruling” must be dismissed. “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). Complainant’s allegations fit that description.

True enough, deciding a case as the result of a bribe, or some scheme concocted out of court between the judge and the litigants (which is how I understand the allegation of “conspiracy”), is covered by the 1980 Act even though the substance of the decision is not. But complainant offers no evidence of conspiracy or bribery other than the substance of the decision. The line of argument is that an honest judge would have reached one decision, the judge in question did otherwise, and the judge therefore must not be honest. Arguments of this sort must be dismissed under §352(b)(1)(A)(iii) as “lacking sufficient evidence to raise an inference that misconduct has occurred”. It is of course conceivable that a particular adverse decision is the result of malfeasance in office, but the competing possibilities are that (a) the decision was correct, and the complainant is mistaken about what the law requires, or (b) the judge has made a mistake that can be corrected by an appeal in the ordinary course. Thus a judge’s entry of a debatable decision does not support an inference of misconduct, and as the complaint offers no evidence other than the substance of the decisions it must be dismissed.