

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

December 29, 2010

FRANK H. EASTERBROOK
Chief Judge

No. 07-10-90077

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant, a debtor in bankruptcy, is representing herself in an ongoing proceeding. She contends that the presiding judge is biased against her.

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). The allegations of this complaint fit that description. A judge’s decision to continue presiding, despite an allegation of bias, is a “procedural ruling” under the statute unless the judge knows that he is disqualified, see *id.* at 146—and nothing in the complaint or the judge’s rulings implies subjective knowledge that the judge is forbidden to serve. The complaint narrates many adverse rulings, and complainant believes that the judge was too ready to believe complainant’s former lawyer, who complainant accuses of lying when moving to withdraw, but adverse rulings in the course of litigation differ from bias. See *Liteky v. United States*, 510 U.S. 540 (1994).

Complainant believes that the judge should have allowed someone else to rule on her motion for recusal, and that another judge—to whom complainant has tried to address motions and correspondence—should have ruled on these matters rather than referring them to the judge assigned to complainant’s case. I understand complainant’s

concern that the subject judge not be the last word on whether he is the right person to handle her bankruptcy proceeding. Trying to involve another bankruptcy judge is not the way to proceed, however. Claims of bias, or other grounds of recusal, can be presented to the district court on an appeal under 28 U.S.C. §158, or to the court of appeals on an appeal from a final decision. A district judge acting under §158 can review even interlocutory decisions, such as a bankruptcy judge's conclusion that he is not recused. Complainant should present her contentions to the district court, which is the body authorized to address them at this stage of the litigation. The Judicial Council, by contrast, is an administrative rather than an adjudicatory entity. That's one reason why Congress enacted §352(b)(1)(A)(ii).