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

May 22, 2008

FRANK H. EASTERBROOK
Chief Judge

No. 08-7-352-20

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant believes that the district judge assigned to his case should have recused himself because he knows the lawyer for the adverse party. (The lawyer in question is an Assistant United States Attorney who appears frequently before all of the judges in the district.) Complainant also contends that the judge must be biased in favor of the United States because he remarked at a status conference: "The government is always right."

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 this complaint fit that description. Complainant's belief that the judge should have recused himself 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. And complainant offers no reason to believe that the subject judge knew that he should have recused himself. Lawyers who appear frequently are known to the judiciary; this is not a ground of disqualification. Complainant does not allege that the lawyer is the judge's relative or that the dealings between the judge and the lawyer are other than strictly professional.

Because it would be troubling if any district judge believed that "[t]he government is always right", I asked the subject judge to have a transcript of the proceeding prepared. The judge replied that a court reporter was not present at this conference. He added that complainant (who rebuffed the district judge's repeated suggestions that he retain counsel) probably has misunderstood events. According to the judge, any reference to "the government" is not to the government's lawyer but to the governmental official named as the defendant. Complainant wanted the district court to direct the consul in a

foreign nation to issue a visa so that the person complainant describes as his fiancée can travel to the United States. The judge tried to explain orally to complainant—and stated in more detail in his memorandum dismissing the complaint—that the federal judiciary is not authorized to supervise the actions of diplomats in deciding whether to issue visas, and that even if there were such authority in general this particular district court would not be the right venue for such a proceeding.

The 1980 Act does not permit the Chief Judge to resolve a material dispute of fact. See 28 U.S.C. §352(a). There is a dispute of fact here—complainant asserts that the judge said "[t]he government is always right" and the judge denies saying this—but I do not think that the dispute is material. The context shows that this statement, if made, relates to the merits of the underlying claim, and thus comes within §352(b)(1)(A)(ii). Complainant's remedy, if he believes that the judge erred, is by appeal rather than a proceeding under the 1980 Act.

Complainant's remaining allegations do not require separate discussion. All come within the scope of §352(b)(1)(A)(ii). Collectively these allegations reinforce my impression that complainant simply has not grasped the meaning of a judge's statement that the court is not authorized to review the consul's decision. This not in any sense an abdication of the judicial function. To the contrary, every judge is required to act within the scope of his jurisdiction, and to refrain from acting where there is no jurisdiction. The subject judge concluded that he lacked jurisdiction and thus refrained from acting.