

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

March 17, 2010

FRANK H. EASTERBROOK
Chief Judge

No. 07-10-90011

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant is the respondent in a suit for the enforcement of a tax summons. He ignored the proceeding and attempted to avoid service of process, but he was brought to court on a bench warrant. After the judge ordered complainant to comply with the summons, he refused to do so, was held in contempt, and has attempted to avoid enforcement. A bench warrant for his arrest is outstanding. He is now a fugitive.

This did not prevent complainant from suing the federal judge in state court. He contends in this proceeding that his suit automatically disqualifies the federal judge from taking any further steps in the tax-subpoena case. That belief is incorrect. The Committee on Codes of Conduct has concluded in Advisory Opinion 103 that a frivolous, harassing suit against the judge does not disqualify the judge; any other approach would allow a litigant to choose which federal judge will hear the case. At all events, 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, because a decision whether to recuse oneself is an official action. *Id.* at 146.