

THE JUDICIAL COUNCIL OF THE SEVENTH CIRCUIT

219 South Dearborn Street
Chicago, Illinois 60604

December 13, 2006

FRANK H. EASTERBROOK
Chief Judge

No. 06-7-372-47

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

The complainant, the defendant in a criminal prosecution, contends that the district judge acted as the prosecutor's accomplice and did not ensure a fair trial. The lengthy complaint asserts, for example, that the judge "didn't do nothing to help the defendant or release him to help him take care of himself and prepare for trial" and that the judge "didn't know the rules how and when and who must give an order to return the seized things belonging to defendant" and that the judge "forgot the rules of criminal procedure regarding public Authority defense". There is much more; these examples give the tenor.

All of these particulars relate to the conduct of the pretrial, trial, and post-trial proceedings. A judicial-misconduct complaint is not, however, a means to obtain review of the judge's rulings in the litigation. Any complaint that is "directly related to the merits of a decision or procedural ruling" must be dismissed. 28 U.S.C. §351(b)(1)(A)(ii). Most allegations of this complaint fit that description. "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 asserts that the judge was biased against him, but this too is related to the merits of judicial action. See Standard 2, *supra*, at 146. (The *Report's* exception for refusal to recuse if the judge *knows* that recusal was legally required is not at issue here. The complaint does not offer any basis for an inference that the judge actually knew that recusal was obligatory.)

In two respects, though, the complaint alleges more than error. Complainant writes that the judge “complained to jury about his salary, but after trial, to the best of my knowledge, Judge bought two new cars (VW and Toyota van). Did judge too receive benefits to convict defendant?” Allegations of bribery are within the province of the statute, but this allegation is too skimpy to require further inquiry, The chief judge may dismiss any assertion that is “lacking sufficient evidence to raise an inference that misconduct has occurred”. 28 U.S.C. §352(b)(1)(A)(iii). The observation that the judge has purchased two vehicles—not very costly ones, at that—does not raise an inference that the judge has unlawful sources of income. Judicial salaries are low compared with those of partners in law firms but high enough to support the ownership of cars and vans suited to normal family life.

The other non-merits-related assertion is that the judge conspired with the prosecutor. An extra-judicial deal with one of the litigants is wrongful conduct whether or not the judge resolves all issues in the case correctly. See Standard 2, *supra*, at 145. Like the allegation of bribery, however, this one lacks particulars. Complainant’s only basis for asserting the existence of a “conspiracy” is that rulings went against him. This does not require any further inquiry. Cf. *Liteky v. United States*, 510 U.S. 540 (1994). Complainant’s allegation is both frivolous and unsupported by evidence.