

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

August 10, 2007

FRANK H. EASTERBROOK
Chief Judge

No. 07-7-352-31

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant describes himself as a potential witness in a pending criminal prosecution. He has filed numerous motions in that case, asking the judge for appointed counsel, for permission to intervene as a party, and for other relief. Complainant asserts that the judge has committed misconduct by not ruling on these motions.

Private parties cannot intervene in criminal cases, and as complainant is not a party it is not clear why the district judge should issue rulings concerning papers he has submitted. Potential witnesses are just interested private parties. A person under subpoena may file a motion to quash, and thus be released from any obligation to testify, but as far as I can see complainant has not filed such a motion. The district judge does not commit misconduct by ignoring documents filed by a non-litigant, however loud the non-litigant's proclamation of concern about what is happening in the litigation.

What is more, even if complainant were a litigant the complaint would be dismissed under 28 U.S.C. §352(b)(1)(A)(ii), which provides that any complaint "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). Complainant believes that, by contesting what he describes as wrongful inaction, he avoids this statutory rule. Not so. A decision about how to allocate

judicial time—and thus about which motions (and which cases) to address, in which order—concerns procedural rulings and thus is within the scope of §352(b)(1)(A)(ii). Thus “[a] complaint of delay in a single case is properly dismissed as merits related.” *Report* at 146. Complainant does not allege that the district judge is generally unable or unwilling to handle the business of his court; he contests only what he calls delay in addressing his filings.