

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

September 6, 2007

FRANK H. EASTERBROOK
Chief Judge

No. 07-7-352-35

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant is in prison on both state and federal convictions. His requests for collateral relief under 28 U.S.C. §2254 and §2255 have been unsuccessful.

While an appeal from the denial of a request for collateral relief (and for a certificate of appealability) was pending, complainant filed a motion for reconsideration in the district court. The motion was granted, but on reconsideration the district court again denied the application for relief and also declined to issue a certificate of appealability. Complainant filed a second notice of appeal. He also filed in the district court another motion for reconsideration and a certificate of appealability. Proceedings were transferred to the judge now complained of, who took no action while the appeals were pending. After the court of appeals dismissed the first appeal for want of jurisdiction and dismissed the second after deciding that complainant is not entitled to a certificate of appealability, the district judge denied as moot complainant's renewed request for a certificate of appealability.

Complainant contends that the district judge should have issued a certificate of appealability while the second appeal was pending, rather than waiting until after the court of appeals had acted. This subject is outside the scope of the Judicial Conduct and Disability Act of 1980. Section 352(b)(1)(A)(ii) provides that any complaint "directly related to the merits of a decision or procedural ruling" must be dismissed. "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's allegations fit that description, even if they are viewed as objections to delay rather than to the action ultimately taken. For deciding when to act, no less than what to do when acting, is directly related to the merits of a procedural ruling. *Id.* at 146 ("A complaint of delay in a single case is properly dismissed as merits related.").

Complainant charges the district judge with bias, but he offers no support for that charge other than the adverse decision, which is not enough. See *Liteky v. United States*, 510 U.S. 540 (1994). A district judge may preside in multiple cases concerning the same litigant. (The judge in question presided over the federal criminal prosecution and has denied collateral relief from both state and federal convictions.) A judge must act exclusively on the basis of the record in judicial proceedings, but the fact that a judge may have learned in one case information pertinent to another does not prevent that judge from resolving the latter litigation.