

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

November 29, 2007

FRANK H. EASTERBROOK
Chief Judge

No. 07-7-352-50

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant, a prisoner, is the plaintiff in a civil action. He believes that the judge to whom the suit has been assigned is disqualified because he presided over earlier litigation involving the same parties. He also maintains that the judge has erroneously denied some of his motions, including requests for discovery and for assistance in obtaining counsel.

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). The 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). For this purpose, a district 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. Complainant’s proper recourse is to file a motion to recuse and pursue it through the normal channels of litigation. The *Report’s* proviso for the situation in which “the judge knew he should recuse but deliberately failed to do so for illicit purposes” (*ibid.*) is not applicable. No rule of law requires recusal just because a judge has heard prior litigation involving the same parties and similar factual allegations. See, e.g., *Liteky v. United States*, 510 U.S. 540 (1994).