

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

May 22, 2008

FRANK H. EASTERBROOK
Chief Judge

No. 07-08-90026

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant, the defendant in a pending criminal prosecution, believes that the district judge is biased against him.

This complaint is similar to one I dismissed last month (No. 08-7-352-18, or 07-08-90018 in the new numbering). I informed complainant that adverse decisions (whether or not erroneous) are outside the scope of the Judicial Conduct and Disability Act of 1980. 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). “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. Complainant’s belief that the judge should have recused herself is within this rule. A judge’s decision to continue presiding is “directly related to the merits of a ... procedural ruling” unless the judge knows that she is disqualified. See *id.* at 146.

The current complaint does not make any effort to show that the district judge’s conduct is outside the scope of §352(b)(1)(A)(ii). Indeed, complainant simply ignores my decision and the text of the statute. The current complaint asserts that, at a hearing, “the judge had an attitude towards me” but does not give any particulars, so it is also subject to dismissal under §352(b)(1)(A)(iii), which provides that the Chief Judge must dismiss any complaint that is “lacking sufficient evidence to raise an allegation that misconduct has occurred”. This complaint offers absolutely no evidence—not even the date of the hearing.

Complainant believes that the pending charges are unfounded and that the judge should dismiss them. Even if this is so, and if the district judge erred in declining to dismiss the indictment (or advance the date of the trial), the appropriate response is an

appeal from the final decision. Complainant must understand that the Judicial Conduct and Disability Act of 1980 is *not* an error-correction device. The 1980 Act is administered by the Judicial Council, which is an administrative body rather than a court. Complainant is represented by counsel in the criminal prosecution and should rely on his lawyer's advice and assistance in dealing with the pending charges.