

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

July 16, 2008

FRANK H. EASTERBROOK
Chief Judge

No. 07-08-90061

IN RE COMPLAINT AGAINST JUDICIAL OFFICERS

MEMORANDUM

Complainant believes that multiple federal judges have committed misconduct by not acting on his many applications for writs of habeas corpus under 28 U.S.C. §2241—and that even those judges who have never received one of his applications have an ethical duty to file one on his behalf sua sponte and appoint counsel for him.

Because this complaint concerns indefinitely large set of judges, and potentially all of them, the rule of necessity allows me to act on the application. See the Comment to Rule 25 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

As far as I can tell, however, I have never seen any of complainant's petitions. And for a good reason. He believes that he can file as many applications as he pleases and name the judge to act on each. The power to pick one's judge is not something that any prisoner can assert. Indeed, under Fed. R. App. P. 22(a), which was added to the Appellate Rules by the Antiterrorism and Effective Death Penalty Act of 1996 and thus has the status of a statute, no federal appellate judge is entitled to entertain any of complainant's applications. This rule provides:

An application for a writ of habeas corpus must be made to the appropriate district court. If made to a circuit judge, the application must be transferred to the appropriate district court. If a district court denies an application made or transferred to it, renewal of the application before a circuit judge is not permitted. The applicant may, under 28 U.S.C. § 2253, appeal to the court of appeals from the district court's order denying the application.

The conduct that complainant deplures—that no matter how many applications he files with federal appellate judges, all that happens is that the clerk's office transfers them to the district court (where they are dismissed under 28 U.S.C. §2255(e) because §2255

rather than §2241 is the right way to proceed)—is exactly what *should* happen under Rule 22(a).

Complainant's belief that all judges must spontaneously espouse his position is incorrect. Judges are neither advocates nor ombudsmen.

This complaint is dismissed under 28 U.S.C. §352(b)(1)(A)(i) because it does not allege misconduct.