

THE JUDICIAL COUNCIL OF THE SEVENTH CIRCUIT

219 South Dearborn Street
Chicago, Illinois 60604

September 2, 2008

FRANK H. EASTERBROOK
Chief Judge

No. 07-08-90076

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant is in federal prison for drug offenses. He believes that the district court erred in concluding that his petition for a writ of quo warranto is frivolous. He also complains that the clerk of court has not docketed all of his filings.

This is the second complaint that this prisoner has filed against this district judge. I dismissed the prior complaint because any charge 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). This complaint fits that description. The limitations of §352(b)(1)(A)(ii) cannot be evaded by accusing the judge of bias, because whether recusal is required is itself a judicial decision within the scope of this subsection. A 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. The remedy for a judge’s erroneous decision that recusal is unnecessary lies in the court of appeals, not the Judicial Council.

The 1980 Act applies to judges but not clerks of court, though judges must supervise the clerk’s office. Errors by the clerk are regrettable but not a reason for action under this statute. For what it is worth, however, the docket sheet shows that complainant’s submissions have been accepted and filed, when properly presented. The district judge has entered an order limiting complainant’s filings, after concluding that he is a vexatious litigant. Such orders are permissible in principle, see *Support Systems*

International, Inc. v. Mack, 45 F.3d 185 (7th Cir. 1995); *In re Skupnewitz*, 73 F.3d 702 (7th Cir. 1996), and whether the order concerning complainant in particular is appropriate is another subject within the scope of §352(b)(1)(A)(ii).

The current complaint tracks the former one in asserting that adverse decisions prove bias or corruption. I informed complainant earlier this year that an assertion along the lines of: "I should be winning; instead the rulings are going against me ; thus the judge must be biased or in cahoots with the other side" is deficient because it lacks "sufficient evidence to raise an inference that misconduct has occurred", 28 U.S.C. §352(b)(1)(A)(iii), independent of the problem under subsection (b)(1)(A)(ii). See *Liteky v. United States*, 510 U.S. 540 (1994). Adverse decisions show absence of merit, not presence of bias. The district court's conclusion that complainant's filings are frivolous has substantial support. See, e.g., *Melton v. United States*, 359 F.3d 855 (7th Cir. 2004). Perhaps the judge erred—I do not attempt to prejudge complainant's pending appeal—but claims of error must be presented to the court of appeals rather than the Judicial Council, an administrative body.

Complainant has ignored my earlier decision. He does not try to show how his complaint can be reconciled with 28 U.S.C. §352(b)(1)(A). Instead of trying to comply with the statute, complainant has checked boxes on the complaint form to assert that his complaint is unrelated to any pending litigation and that he is not a litigant. The body of the complaint belies those assertions. I now notify complainant that any further use of the 1980 Act on his behalf will be treated as frivolous unless he makes a serious effort to show how his grievances are compatible with §352(b)(1)(A). Moreover, a further frivolous complaint will lead me to ask the Judicial Council to enter an order curtailing his abuse of the 1980 Act's processes. See Rule 10(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.