

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

September 11, 2008

FRANK H. EASTERBROOK
Chief Judge

No. 07-08-90077

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant, a defendant in a pending federal criminal prosecution, believes that the district judge has erred by appointing standby counsel after complainant fired three attorneys who had been appointed to represent him. He thinks that the judge has displayed "bias" and committed "fraud" by accepting some documents filed by standby counsel and by failing to rule (as of mid-August 2008) on a motion that complainant filed at the end of May 2008.

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).

An allegation of bias does not take this situation outside §352(b)(1)(A)(ii), for two reasons. First, the only evidence of "bias" (or, for that matter, of "fraud") is the adverse judicial decisions, which is not enough. See *Liteky v. United States*, 510 U.S. 540 (1994). Second, the decision whether to continue presiding in a case is itself a procedural ruling covered by §352(b)(1)(A)(ii). See *Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice* at 146. Likewise delay in ruling on motions, while regrettable, is covered by §352(b)(1)(A)(ii). Every judge must decide how to apportion time across cases and litigants. (Complainant does not allege that the subject judge is systematically unable or unwilling to perform official duties promptly and efficiently; his grievance concerns one motion in one case.)

Contentions of the sort that complainant presents may be raised on appeal from a final decision. The Judicial Conduct and Disability Act of 1980 is not a means to obtain interlocutory review of arguments and motions in pending suits.