

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

April 9, 2008

FRANK H. EASTERBROOK
Chief Judge

No. 08-7-352-18

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant, the defendant in a pending criminal prosecution, believes that the district judge must be biased against him because the judge has not granted any of his motions.

It is far from clear that the judge is required to entertain any of complainant's motions. He is represented by counsel, and a represented litigant is not entitled to file supplemental motions on his own behalf. It appears that complainant and his counsel may disagree about strategy; complainant insists that the district judge has erred by granting some motions filed by complainant's own lawyer. If there is an irreconcilable difference, complainant is free to discharge counsel and represent himself. Disputes between an accused and his lawyer do not supply any reason to accuse the judge of misconduct.

At all events, 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. There is no evidence of bias beyond the adverse rulings, which do not require recusal. *Liteky v. United States*, 510 U.S. 540 (1994).