

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

February 19, 2009

FRANK H. EASTERBROOK
Chief Judge

No. 07-09-90024

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant, a state prisoner, is the petitioner in a proceeding pending in district court seeking a writ of habeas corpus. The district judge recruited counsel to assist complainant. Counsel concluded, however, that the petition lacks arguable merit and asked leave to withdraw; the judge permitted counsel to do so and informed complainant that he would not recruit another lawyer to represent him. Complainant asserts that this decision constitutes misconduct because it deprives him of his constitutional right to counsel.

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). Any argument that the ruling in question was erroneous may be presented on appeal from the final decision.

Complainant must recognize, moreover, that there is no right to counsel in waging a collateral attack on a final judgment of conviction. A district judge has discretion to recruit counsel, but no obligation to do so—and certainly no obligation to recruit a second lawyer after the first concludes that the claim lacks merit. Nor is a prisoner entitled to relief based on an argument that counsel pursued a collateral attack ineffectively. 28 U.S.C. §2254(i).

The complaint asserts in passing that *ex parte* contacts took place. But it offers no details, and the lack of any factual support means that this aspect of the complaint is unfounded. 28 U.S.C. §352(b)(1)(A)(iii).