

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

March 11, 2009

FRANK H. EASTERBROOK
Chief Judge

No. 07-09-90027

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant has filed multiple appeals. All have been decided against him, unanimously. He contends that one circuit judge, who has been involved in several of these appeals, must be biased against him because the judge had knowledge of statements made by counsel for the appellee in a jurisdictional memorandum filed in the court of appeals. Complainant maintains that this produced "knowledge of disputed facts" requiring the judge's disqualification.

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). A decision not to disqualify oneself is a "procedural ruling" for the purpose of this statute. *Id.* at 146.

What is more, the judge did not err in participating. Knowledge gained from documents filed in court is not extrajudicial and does not disqualify a judge. See *Liteky v. United States*, 510 U.S. 540 (1994). Complainant's position seems to be that any judge who knows enough to resolve the appeal is disqualified from doing so. That cannot be right. His real complaint is that he should have won rather than lost in the court of appeals, but that subject is squarely covered by §352(b)(1)(A)(ii). The Judicial Council is an administrative rather than a judicial body.