

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

May 27, 2009

FRANK H. EASTERBROOK  
Chief Judge

No. 07-09-90063

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant, the defendant in pending civil litigation, believes that the judge assigned to the case committed misconduct by denying a motion for recusal.

Any complaint “directly related to the merits of a decision or procedural ruling” must be dismissed. 28 U.S.C. §352(b)(1)(A)(ii); see Rule 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. “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 contention that a judge erred in denying a motion to recuse is covered by §352(b)(1)(A)(ii); the remedy for an erroneous decision is in the court of appeals rather than a proceeding under the 1980 Act. *Id.* at 146.

The *Implementation Report* says that failure to recuse is not merits related if the judge knows that recusal is required but continues sitting for an improper purpose. Complainant does not allege that the subject judge knows that recusal is mandatory, and I cannot see any basis for drawing such an inference. Complainant offered two kinds of argument in support of the motion. One is that the judge has made several decisions adverse to complainant’s interests. Such decisions are not a proper basis for recusal, whether or not the decisions are erroneous. See *Liteky v. United States*, 510 U.S. 540 (1994). One litigant or another loses in every suit; this fact of the judicial system does not require any judge to step aside. It is instead why there are appellate courts.

The other argument is that the judge serves on the board of directors of a hospital at which the plaintiff holds medical privileges. The subject judge observed that complainant’s statement is inaccurate: The entity on whose board the judge serves does not employ the plaintiff or use his medical services. Complainant is not a lawyer and could not file an affidavit under 28 U.S.C. §144, so the judge was not required to accept

complainant's factual assertion. The Code of Conduct for United States Judges permits judges to serve on the boards of hospitals (see Advisory Opinion 28 issued by the Committee on Codes of Conduct), provided that they do not participate in fundraising and that they recuse when the hospital is a litigant. And even if the judge were to serve on the board of the hospital where the plaintiff works (or the board of an affiliated entity), this would not automatically disqualify the judge. The hospital is not a litigant, nor is any affiliate of the hospital. Complainant does not offer any reason to think that either the hospital or the subject judge has any financial interest in the litigation.

I therefore conclude that a reasonable person in the subject judge's position would not know that recusal is mandatory, and that §352(b)(1)(A)(ii) accordingly requires dismissal of this complaint.