

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

July 2, 2009

FRANK H. EASTERBROOK
Chief Judge

No. 07-09-90074

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant is serving a long prison term; his conviction and sentence were affirmed on appeal almost a decade ago. Ever since, he has been seeking collateral relief. But because federal law allows only one such request without leave of the appellate court, see 28 U.S.C. §§ 2244, 2255(h), complainant's many motions in the district court have been unavailing.

The judge who presided over complainant's trial recused himself after the court of appeals affirmed the conviction and sentence. Post-conviction proceedings have been assigned to a different district judge. Complainant observes, however, that the trial judge has twice entered orders rejecting complainant's attempts to initiate successive collateral attacks without appellate review. He contends that this unauthorized action reflects judicial bias and entitles him to be released from prison.

Because one district judge is not authorized to act in a case assigned to another (especially so when a recusal led to the reassignment), I asked the subject judge for a response. He has replied that he should not have entered the orders in question, and that both have now been vacated—one by the district judge assigned to the case following the subject judge's recusal, and the other by the subject judge following receipt of my inquiry. The subject judge also has sent complainant a letter of explanation and apology. As the subject judge explained to complainant (and to me), he thought at the time that entry of the orders was appropriate because, given §2255(h), the district court had no substantive decision to make. The point of the orders was to direct complainant's attention to the statutory provisions and invite complainant to use them, not to resolve any issue on the merits. But the subject judge has recognized, after reflection, that even so limited a judicial role is inappropriate following recusal, and that complainant's motions—which were routed to the subject judge by the clerk's office in error—should have been transferred immediately to the judge assigned to complainant's post-conviction proceedings.

The Judicial Conduct and Disability Act of 1980 permits the chief judge to conclude the proceeding once “appropriate corrective action has been taken”. I conclude that the subject judge’s apology, and the vacatur of his orders, are “appropriate corrective action”. See Rule 11(d) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, and the Judicial Conference’s commentary on the requirements for effective corrective action. See also *Assessing Compliance with the Act, Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice* 149–50 (2006). Complainant did not suffer any harm from the subject judge’s acts. As both the subject judge and the judge currently assigned to the matter have informed complainant, there can be no further proceedings in the district court without appellate permission under §2244 and §2255(h). Complainant’s belief that a harmless misstep by a district judge wipes out his sentence for serious crimes is untenable—and at all events the Judicial Council is not authorized to change the disposition of litigation. (The Council is an administrative rather than a judicial body.) This proceeding is therefore closed.