

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

September 23, 2009

FRANK H. EASTERBROOK  
Chief Judge

No. 07-09-90084

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

More than two years after being fined and sentenced to 140 months' imprisonment, a defendant began to file motions in the closed case. (Neither an appeal nor a motion under 28 U.S.C. §2255 was filed.) The first motion asked the judge to unseal some records. The second asked the judge to rule on the first, and to empanel a grand jury to investigate what the defendant believes are federal crimes. The third asked the judge to recuse himself.

This complaint, by a different federal prisoner, asserts that, by not ruling on these motions, the judge has demonstrated mental incompetence. One problem with this complaint is that delay in a single case does not demonstrate a problem within the scope of the Judicial Conduct and Disability Act of 1980. Standard 2 for Assessing Compliance with the Act, *Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice* 145–46 (2006). A second, and more fundamental, problem is that the allegations of the complaint do not show any delay in performing a judicial duty, let alone mental incompetence. Complainant supposes that judges must continue to issue orders in closed cases. Not at all. A district judge's power in a criminal case expires seven days after entry of judgment. Fed. R. Civ. P. 35(a). Certain kinds of motions—under §2255, or for a new trial based on newly discovered evidence if filed within three years, see Rule 33(b)(1), or for a sentence reduction based on assistance to the prosecutor more than one year after sentencing, see Rule 35(b)(2)—permit or require the judge to take additional action. No such motion has been filed in the case at issue. A district judge is not an ombudsman. If a crime has been committed, that should be brought to the attention of the United States Attorney; a district judge lacks authority to initiate prosecutions. And because no motions within the court's authority are pending, there is nothing for the judge to recuse himself *from*. It might have averted misunderstanding had the judge stated this in a brief order. But the fact remains that, once a case is over, a district judge does not commit misconduct by ignoring documents submitted by a litigant who refuses to admit defeat.