

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

March 29, 2010

FRANK H. EASTERBROOK
Chief Judge

No. 07-10-90017

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant is a federal prisoner who has filed multiple requests for post-conviction relief. Since 2006 these proceedings have been handled by the subject judge. Complainant believes that the judge is biased against him, but the judge has declined to recuse himself. Complainant believes that this is misconduct and asks the Judicial Council to assign the proceedings to a different district judge.

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). See also 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). The allegations of this complaint fit that description. A judge’s decision that it is appropriate for him to continue presiding is a ruling on a procedural motion. *Id.* at 146. (The *Report’s* exception for situations in which the judge knows that recusal is obligatory does not apply here.) The right way to obtain review of a judge’s decision to continue serving is to apply for a writ of mandamus (if the litigant believes that a judge’s participation creates an appearance of impropriety) or by appeal from a final decision (if the litigant believes that the judge displayed actual bias).