

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

August 16, 2010

FRANK H. EASTERBROOK
Chief Judge

No. 07-10-90051

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant, who has been convicted of a federal felony that he hopes to have set aside on collateral review, contended last year that the district judge assigned to both the original case and the §2255 motion has committed misconduct by not recusing himself and by facilitating an unlawful search. I dismissed that complaint (No. 07-09-90092) under 28 U.S.C. §352(b)(1)(A)(ii) and (iii).

Now complainant has filed a follow-up submission, contending that he has new evidence of judicial misconduct. The “evidence” is complainant’s own declaration, purporting to narrate a conversation he had with the foreperson of the jury. (Complainant calls this document an affidavit, but it is not, because it was not signed before, and attested by, a person authorized to administer oaths.) The declaration, and the current complaint, are dated after the foreperson’s death, so complainant’s account of the conversation can be neither verified nor refuted.

My previous order informed complainant that 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). A judge’s decision not to recuse himself meets the statutory description. *Id.* at 146. Although complainant is a lawyer (but no longer a member of the bar), the new complaint does not mention §352(b)(1)(A)(ii). Nor does it mention §352(b)(1)(A)(iii), which my prior decision discussed. This subsection requires dismissal of a complaint that depends on allegations “incapable of being established through investigation”, a fair description of complainant’s account of a conversation with a deceased person.

The account is deficient on its own terms, since the deceased juror does not explain how she could have known the “facts” that complainant thinks establish the judge’s participation in a sprawling conspiracy to obstruct justice. The narrative reads more like the plot of a bad TV show, in which mysterious and unaccountable persons run the world and use their powers to pick on randomly selected innocent citizens, than like any plausible description of the judicial system.

My earlier decision told complainant that, in order to achieve the disqualification of the district judge, he needs the signature of a member of the bar on an affidavit filed under 28 U.S.C. §144. It is evident from the current complaint that no licensed attorney is willing to vouch for complainant’s tall tales. The current successive complaint, which ignores the governing provisions of the 1980 Act, suggest that complainant has decided to use the 1980 Act’s processes for harassment. Any further complaint that does not make a serious effort to show how it is compatible with §352(b)(1)(A)(ii) and (iii) will be dismissed summarily, and I will direct complainant to show cause why the Council should not enter an order curtailing frivolous use of the 1980 Act’s mechanisms.