

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

March 24, 2011

FRANK H. EASTERBROOK  
Chief Judge

No. 07-11-90019

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant was among the defendants in a civil suit that has recently been concluded. He contends that a magistrate judge committed misconduct by participating even though disqualified under 28 U.S.C. §455. (Complainant also charged the district judge with misconduct. I have previously dismissed that complaint, No. 07-11-90018.)

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 he is entitled to participate in a given suit is a “procedural ruling” unless the judge *knows* that he is disqualified. *Report* at 146.

The allegations of the complaint led me to conduct a preliminary inquiry into the possibility that the magistrate judge may have realized that he was disqualified. I asked the subject judge for a response. The subject judge’s two letters persuade me that he was not disqualified—and therefore necessarily did not know that he was disqualified.

According to complainant, the plaintiff in the recently concluded suit is the wife of a friend of the subject judge. The judge and the plaintiff’s husband both are (or were)

active participants in a Rotary Club. Complainant asserts that the judge therefore must have known the plaintiff as well as her husband. The judge's response reveals that he had never met the plaintiff until the litigation commenced; his knowledge of one spouse did not extend to the other, because the friendship was not social. (That is, the judge did not fraternize with the husband other than as part of the Rotary Club's functions.)

Section 455(b)(1) disqualifies a judge who has a personal bias or prejudice about a party, or personal knowledge of disputed evidentiary facts. Neither the complaint, nor its attachments, nor the subject judge's letters to me, gives any reason to believe that the judge was disqualified under this provision. That leaves the residual clause of §455(a), which covers situations in which the judge's "impartiality might reasonably be questioned". This subsection is applied from the standpoint of an objective observer aware of all relevant facts. *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988). I do not think that such an observer would "reasonably" question the impartiality of the subject judge under the circumstances revealed by the complaint, the attachments, and the judge's letters to me. It follows that the subject judge was not himself actually aware of a need to recuse, and that §352(b)(1)(A)(ii) requires me to dismiss the complaint.