

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

June 16, 2011

FRANK H. EASTERBROOK
Chief Judge

No. 07-11-90033

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant is the defendant in a criminal prosecution scheduled for trial next month. She contends that the district judge committed misconduct by ignoring documents she has filed, informing her of the maximum possible punishment, and advising her to consult with her lawyer.

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). Some allegations of this complaint fit that description. Those that do not are either outside the scope of the Act and thus are dismissed under §352(b)(1)(A)(i) or are unsupported by any details, and are dismissed under §352(b)(1)(A)(iii).

For example, complainant asserts that the judge has committed “a felony on the bench by speaking for [to?] the Attorney all the time, not answering any paper work I have submitted.” Attachments to the complaint illustrate the sort of filings that complainant has submitted to the district court. The reason the judge has acted this way is that complainant has an attorney. Litigants represented by counsel must file papers through counsel; represented litigants do not have a right to file documents on their own. (In other words, there is no right to hybrid representation.) The judge’s decision

not to allow complainant to represent herself at the same time as she is being represented by counsel is covered by §352(b)(1)(A)(ii). This is not any form of misconduct, let alone a felony; I have no idea what crime complainant thinks the judge committed. Complainant's assertion that the judge has not "answer[ed] any of my questions that I have" is subject to the same analysis. Complainant should address her questions to her lawyer; a judge does not give legal advice to litigants.

The judge has accommodated complainant by replacing lawyers who have dissatisfied complainant. Three lawyers have been appointed and dismissed; complainant is now represented by a fourth. Complainant contends that the judge committed misconduct by urging her to stick with counsel rather than represent herself. This is not any form of misconduct; it is good advice. The documents attached to the complaint show that complainant does not understand how the criminal process works and could not adequately defend herself. She has a right to self-representation nevertheless, see *Faretta v. California*, 422 U.S. 806 (1975)—for anyone competent to stand trial also is entitled to dispense with counsel, see *Godinez v. Moran*, 509 U.S. 389 (1993)—but a judge may and usually should discourage defendants from exercising that right.

The judge's advice about the maximum sentence is normal; it is not misconduct. Complainant's assertion that "I have been given a sentence before I was ever tried" reflects her misunderstanding of the proceedings and demonstrates the judge's wisdom in urging complainant to appear through counsel.

Finally, complainant's assertion that the judge "has been very rude and unprofessional, and has exhibited bad behaviors" is unsupported by examples and is dismissed under §352(b)(1)(A)(iii).

The complaint asserts that many other persons, including the prosecutor and agents of the FBI, also have committed misconduct. The 1980 Act covers only judicial officers. I therefore do not discuss complainant's other grievances.