

Judicial Council of the Seventh Circuit.  
219 South Dearborn Street  
Chicago, Illinois 60604

August 8, 2013

Circuit Judge Richard A. Posner\*

No. 07-13-90053

IN RE COMPLAINT AGAINST A JUDGE

MEMORANDUM

Complainant has filed a judicial misconduct complaint alleging that the judge should have recused himself from a case in which a governmental party was represented by a lawyer who teaches at a law school in which the judge also teaches. (The complainant also correctly points out in his complaint that I teach at the same law school.)

Complainant cites to 28 U.S.C. Section 455(a) and (b) (1) and (3) as the basis for the judge to recuse himself. The complainant is unhappy with the judge's decision in the underlying suit and believes that the judge should have recused. In addition to stating that the judge and the attorney teach at the same law school, the complainant also points out that both work in the same courthouse. Complainant also cites to 28 U.S.C. Section 144 as a reason for the judge not to decide his case. However, the court record does not disclose that complainant ever filed a timely and sufficient affidavit as required by that statute.

A decision as to whether a judge should recuse is an issue which should be raised in court and this proceeding is not a court proceeding. A judicial misconduct proceeding is not a permissible alternative to an appeal. It is not an error-correction device. See House of Representatives Report No. 96-1313, 96th Cong., 2nd Sess. (1980) at 10. If the judge failed to recuse, the remedy is not through the judicial misconduct complaint process. Section 352(b)(1)(A)(ii) of Title 28 of the United States Code and Rule 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings specifically exclude allegations calling into question the correctness of a judge's ruling.

There could be circumstances in which failure to recuse may constitute judicial misconduct but this is not it. Nothing about this judge and lawyer teaching at the same law school or working in the same building requires the judge to recuse when the attorney appears before the judge. The impartiality of the judge cannot be reasonably questioned.

The complaint also alleges that the judge assigned complainant's case to himself. Cases in the United States Court of Appeals for the Seventh Circuit are assigned at random.

This complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and Rule 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

\*This complaint was assigned to Circuit Judge Richard A. Posner pursuant to 28 U.S.C. § 351(c).