

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

May 18, 2018

FRANK H. EASTERBROOK
Circuit Judge[†]

No. 07-18-90037

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

In an earlier proceeding (No. 07-18-90014), complainant alleged that a circuit judge committed misconduct by misstating facts and law in an opinion. That complaint was referred to the Chief Judge, as 28 U.S.C. §352 requires, and was dismissed on the ground that the statute does not apply to grievances that are “directly related to the merits of a decision or procedural ruling”. 28 U.S.C. §352(b)(1)(A)(ii). A petition for rehearing, or rehearing en banc, or certiorari, supplies the remedy for errors made in judicial opinions.

This follow-up complaint accuses the Chief Judge of misconduct for dismissing the first complaint. It asserts (a) that the Chief Judge, having been on the panel whose opinion was written by the subject judge in No. 07-18-90014, should have recused herself, and (b) that the first subject judge’s misconduct was so clear that not acknowledging and punishing it must be an independent act of misconduct.

[†] Handling this complaint as the most senior non-recused active judge. See 28 U.S.C. §351(c); Rule 25(f) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

This complaint does not attempt to show how it is compatible with §352(b)(1)(A)(ii), even though the order dismissing the initial complaint alerted complainant to that statute. The current complaint, like the first, is foreclosed by that law.

“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). This includes a contention that a judge erred by deciding to serve in a particular matter. See Rule 3(h)(3)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. The current complaint concerns official actions by the Chief Judge—first the action of hearing No. 07-18-90014 at all, and second the action of dismissing it under §352(b)(1)(A)(ii). It therefore must be dismissed.

A few words are in order about why I am hearing this complaint. The Chief Judge, as the subject judge, is disqualified, and the judge next in seniority is recused. Under the statute and rules, the matter comes to me. I am also the judge complained about in No. 07-18-90014. But I do not think that a reasonable observer would perceive a conflict. Judges are not recused forever just because complained about in the past. I have no stake in the outcome of the current proceeding, and the complaint is so clearly frivolous that there is little point in passing the matter to another judge.

There is a potential for infinite regress. Complainant says that his goal is to have the matter transferred to some other circuit. Filing complaints against each judge in turn— whoever acts on a given complaint becomes the next target, and judges complained about earlier cannot return to serve—is not a strategy that can be permitted to succeed. The statute has a limited scope, which complainant must accept. He was entitled to seek review by the Judicial Council of the Chief Judge’s order in No. 07-18-90014. He is not entitled to keep filing more complaints in the hope of exhausting the pool of non-recused judges.