

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

May 22, 2008

FRANK H. EASTERBROOK
Chief Judge

No. 07-08-90042

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant sent a letter to a former Chief Judge contending that the district judge in a pending criminal prosecution should recuse herself. Although this communication is not on the proper form for a submission under the Judicial Conduct and Disability Act of 1980, I have elected to treat it as a complaint.

Complainant describes herself as a “dear friend” of the defendant, who has himself filed two complaints asking for the judge to be removed from the litigation. I have dismissed both complaints (No. 08-7-352-18 and No. 07-08-90026), informing defendant that adverse decisions (whether or not erroneous) are outside the scope of the Judicial Conduct and Disability Act of 1980. 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). “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 belief that the judge should have recused herself is within this rule. A judge’s decision to continue presiding is “directly related to the merits of a ... procedural ruling” unless the judge knows that she is disqualified. See *id.* at 146. The judge’s decisions not to dismiss the indictment, and to set a particular trial date, also are within §352(b)(1)(A)(ii).

The 1980 Act permits anyone to file a complaint. But an orchestrated campaign of complaint-filing on the same subject is an abuse of the statutory procedure. See Rule 10(b) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. Both complainant and the defendant whose friend she is must allow the criminal prosecution to run its course. The remedy for judicial errors (if any) is by appeal, not a cavalcade of complaints under the 1980 Act.