

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

June 27, 2008

FRANK H. EASTERBROOK
Chief Judge

No. 07-08-90056

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant, a federal prisoner, believes that the district judge who presided over the trial and has ruled on post-judgment motions should have recused himself.

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 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. Whether to sit in a particular case is a procedural ruling, so §352(b)(1)(A)(ii) applies. See *Report* at 146.

The *Report to the Chief Justice* treated as a special situation, outside the scope of §352(b)(1)(A)(ii), one in which “the judge knew he should recuse but deliberately failed to do so for illicit purposes”. *Report* at 146. Complainant tries to come within this rule, but the tale he weaves of an elaborate conspiracy is fanciful. Complainant observes that, before his appointment to the bench (more than a decade ago), the judge was a partner of a law firm, one of whose clients is an insurance company that had business dealings with the victim of complainant’s crime. According to complainant, the judge had a conflict because the conviction would reduce the chance that the insurance company would be held liable for the acts of the victim. But the judge has no financial dealings with his old law firm and no reason to do any favors for a client of that firm. Nor is it possible to understand how the insurance company had any financial interest, whether or not complainant attempted to kill the victim with a pipe bomb (as the jury found).

Complainant’s further belief that the judge should have understood a need to recuse because complainant was represented by a clinical professor at a law school where the

judge occasionally teaches a class or seminar (and where one of the judge's former law clerks is employed) is similarly incorrect. The judge does not have any financial or other interest in the outcome of the case, nor for that matter does a clinical professor or a law student working in the clinic. Judges are not disqualified from presiding just because a former clerk is affiliated with a party's lawyer and may sit even when the former clerk directly represents the litigant. Nothing in the complaint raises the smallest doubt about the district judge's entitlement to serve in this litigation.

Complainant also believes that the district judge should have "reported" the federal crime of witness tampering. A district judge is not an ombudsman. Complainant is free to make his own communications to prosecutors if he has information about criminal conduct. Whether there is anything to report is doubtful; complainant apparently thinks that a judge must espouse complainant's version of events. There is no such duty. This aspect of the complaint is dismissed under 28 U.S.C. §352(b)(1)(A)(i) and (iii).