

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

July 15, 2008

FRANK H. EASTERBROOK  
Chief Judge

No. 07-08-90059

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant is the plaintiff in a pending civil action. He believes that the judge should have prevented the United States Attorney from representing himself and other federal defendants. He also contends that the judge should not have threatened him with sanctions for filing frivolous motions, that the judge should have recused himself, and that the judge has conspired with the United States Attorney.

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). Most allegations of the complaint fit that description.

Complainant’s belief that the judge should have recused himself also 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 he is disqualified. See *id.* at 146. A complaint under the 1980 Act is not an appropriate means to bypass the review available by mandamus or appeal. The Judicial Council is an administrative rather than a judicial body.

The allegation of conspiracy is dismissed under §352(b)(1)(A)(iii) because the complaint lacks “sufficient evidence to raise an inference that misconduct has occurred”. Complainant proffers only the adverse judicial rulings. A judge does not conspire with a litigant by ruling favorably on that litigant’s motions. The sort of

evidence that might suggest something untoward—*ex parte* meetings or financial entanglements—is missing here. A complainant cannot evade §352(b)(1)(A)(ii) by labeling adverse substantive or procedural rulings as evidence of “conspiracy” between the judge and the prevailing litigant.