

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

July 20, 2007

FRANK H. EASTERBROOK
Chief Judge

No. 07-7-352-28

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant believes that the district judge presiding in a criminal prosecution now pending should have dismissed the indictment, recruited a different defense counsel to assist him, and investigated an allegation that he has been attacked by a guard while in prison.

Allegations of this kind are barred by 28 U.S.C. §352(b)(1)(A)(ii), which provides that any complaint “directly related to the merits of a decision or procedural ruling” must be dismissed. “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 right forum to deal with matters bearing on the sufficiency of the indictment and the assistance of counsel is an appeal from any sentence that may be imposed.

Federal judges are not ombudsmen and need not “investigate” allegations made to them. Whether battery against complainant occurred in prison is unrelated to the criminal prosecution. Complainant has filed civil litigation concerning this alleged incident; that is the proper way to proceed.

Complainant also asserts that the judge is biased against him, but he provides no evidence of this supposed bias other than the adverse rulings. Adverse rulings differ from bias. See *Liteky v. United States*, 510 U.S. 540 (1994). What is more, a judge’s decision not to recuse is itself related to the merits of a procedural ruling, and thus is outside the scope of the Act. See

Standard 2, *supra*, at 146. (The *Report's* exception for refusal to recuse if the judge *knows* that recusal was legally required is not at issue here. The complaint does not offer any basis for an inference that the judge actually knew that recusal was obligatory.)