

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

September 21, 2007

FRANK H. EASTERBROOK
Chief Judge

No. 07-7-352-37

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant recently was sentenced for a federal crime. He believes that the judge had inappropriate knowledge of disputed facts.

Complainant has been convicted of conduct related to his provision of a handcuff key to a pretrial detainee, X, who then escaped and seized a gun that he used to kill Y and Z. The complained-of judge, who was at the time a magistrate judge, presided over some pretrial proceedings concerning X. Because X committed suicide when he was surrounded after killing Y and Z, the criminal charges against X were dismissed. But suspicion soon focused on the complainant, who became a fugitive and was only recently caught and extradited from a foreign nation. By the time complainant was returned to the United States, the magistrate judge had become a district judge and was assigned to complainant's prosecution.

As complainant sees things, the judge learned information in X's case that was employed to complainant's detriment—and, complainant notes, the judge called him X several times during sentencing (though the judge corrected the error). It is entirely appropriate, however, for a judge to preside in multiple cases with overlapping facts. Information learned in proceedings against X is not extrajudicial, and no reasonable person would think a judge biased or otherwise unable to keep an open mind just because of information learned in related litigation. See *Liteky v. United States*, 510 U.S. 540 (1994). Judges must preside without preconceptions but need not have empty heads. This complaint is dismissed because no judicial misconduct has occurred.