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

October 18, 2007

FRANK H. EASTERBROOK
Chief Judge

No. 07-7-352-38

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant, who calls himself a "bankruptcy petition preparer, paralegal, and alternative dispute resolution representative," charged a fee to prepare and file a bankruptcy petition. The bankruptcy judge, believing that complainant is engaged in the unauthorized practice of law—for he is neither a member of the bar nor acting under a lawyer's supervision—directed complainant to return the fee and threatened to hold him in contempt of court if he failed to do so. He contends that the judge has acted improperly by making this decision.

It is apparent from this description that the complaint comes within 28 U.S.C. §352(b)(1)(A)(ii), which provides that the Judicial Conduct and Disability Act of 1980 does not apply to the substance of a judge's official actions. Section 352(b)(1)(A)(ii) says 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). Complainant's allegations fit that description. If the bankruptcy judge's decision is erroneous, the proper remedy is by appeal to the district court and ultimately to the court of appeals.

Complainant's assertion that the judge "let her own personal bias affect her reasoning and decision" does not avoid §352(b)(1)(A)(ii). The only evidence of "bias" that complainant adduces is the bankruptcy judge's decision to act on her own initiative. Yet this step is authorized by statute, see 11 U.S.C.

§330(a)(2), and cannot be taken as disqualifying. The Bankruptcy Code allows a judge to set a reasonable limit on pre-filing fees charged by counsel, see 11 U.S.C. §329, and there can be no doubt that bankruptcy judges are equally entitled to recoup (for the benefit of creditors) fees that have been paid to persons who are not admitted to the bar and thus not entitled to compensation. See also *Liteky v. United States*, 510 U.S. 540 (1994) (adverse decisions in litigation do not demonstrate bias). 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.)