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

November 6, 2007

FRANK H. EASTERBROOK
Chief Judge

No. 07-7-352-46

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant, a prisoner, is the plaintiff in a suit under 42 U.S.C. §1983. Early in the action the district judge concluded that counsel should be recruited for complainant under 28 U.S.C. §1915(e)(1). Two years later complainant is still unrepresented, and defendants have filed motions, some of which have been resolved on the merits. Complainant contends that the district judge has displayed incompetence by failing to assure his representation by counsel and by continuing to resolve issues in the litigation.

The Judicial Conduct and Disability Act of 1980 does not provide a means to obtain review of "the merits of a decision or procedural ruling". 28 U.S.C. §352(b)(1)(A)(ii). Complainant's allegations fit that description. Both the district judge's rulings on the merits, and his decision to proceed while complainant is unrepresented, are related to the merits and to procedural rulings. "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 judge's judicial actions may be reviewed on appeal. See *Pruitt v. Mote*, No. 05-1620 (7th Cir. Oct. 3, 2007) (en banc).

Section 1915(e)(1) allows a district judge to "request an attorney to represent any person unable to afford counsel." It does not entitle anyone to the "appointment" of counsel, a point that was stressed in *Pruitt*. Members of the bar are entitled to decline a judge's request, and a judge's failure to coerce members of the bar to serve is not misconduct of any kind. See *Mallard v.*

United States District Court for Southern District of Iowa, 490 U.S. 296 (1989). This complaint is therefore dismissed under both §352(b)(1)(A)(i) and (ii).