

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

January 23, 2008

FRANK H. EASTERBROOK  
Chief Judge

No. 08-7-352-05

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant is in a federal prison awaiting a hearing on a motion to revoke his supervised release from a federal sentence. His complaint accuses the magistrate judge assigned to his case of misconduct for (a) appointing as counsel a lawyer he disapproves of (and now has discharged), and (b) scheduling a hearing less than 24 hours following his release from a hospital, where an angioplasty had been performed.

Neither of these steps could plausibly be described as misconduct. The hearing had been set to entertain what complainant called an “emergency motion”; once the judge learned about the medical procedure, the hearing was postponed. And appointing counsel is a normal step. A litigant whose poverty requires counsel at public expense has no right to pick and choose. See *Morris v. Slappy*, 461 U.S. 1 (1983). What is more, the Judicial Conduct and Disability Act of 1980 does not apply to any complaint that is “directly related to the merits of a decision or procedural ruling”. 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). Complainant’s allegations come within this rule.