

**United States Court of Appeals
for the Seventh Circuit**

219 South Dearborn Street
Chicago, Illinois 60604

Gino J. Agnello
Clerk of Court
312-435-5850

March 28, 2018

Walter Tuvell
836 Main Street
Reading, MA 01867

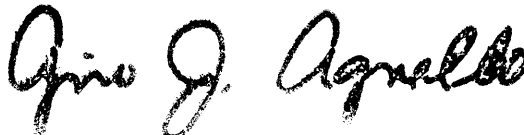
RE: Judicial Misconduct Complaint No. 07-18-90014

Dear Mr. Tuvell:

Enclosed please find an order and a memorandum regarding the disposition of the Judicial Misconduct Complaint which you filed on March 7, 2018 against Circuit Judge Frank H. Easterbrook.

Pursuant to Rule 18(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, you may petition the judicial council of this circuit to review the order. The petition for review must be filed in the clerk's office of the United States Court of Appeals for the Seventh Circuit by May 9, 2018.

Sincerely,



Gino J. Agnello
Clerk

enclosures

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

March 28, 2018

Chief Judge Diane P. Wood

No. 07-18-90014

IN RE COMPLAINT AGAINST CIRCUIT JUDGE FRANK H. EASTERBROOK

WALTER TUVELL
Complainant

ORDER

For the reasons stated in the accompanying memorandum, this complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii), because it is “directly related to the merits of a decision or procedural ruling.” See also Rule 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

THE JUDICIAL COUNCIL OF THE SEVENTH CIRCUIT
219 South Dearborn Street
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Chief Judge Diane P. Wood

No. 07-18-90014

IN RE COMPLAINT AGAINST A JUDGE

MEMORANDUM

On March 7, 2018, Complainant filed a judicial misconduct complaint against one member of the court of appeals panel that was assigned to resolve an appeal in a particular case. Complainant was not a party to this appeal, which was resolved more than five years ago. Instead, he read an article about the case in a law review; the article was written by counsel for the unsuccessful party on appeal. The author of the article accused the subject judge of misrepresenting the record both in the judge's written opinions and in the judge's statements from the bench during oral argument. For example, the article accuses the subject judge of stating that the trial court gave instructions that it actually did not give; that both the defendant and the opposing party made arguments that they did not make; that one or both parties waived or forfeited arguments when that was not the case; that the Supreme Court had said certain things that the Court did not say; and that the defendant's sentencing record was not accurately reported. Complaint charges that these misrepresentations amount to misconduct for purposes of the Judicial-Conduct and Judicial-Disability Act. Complainant asks that his complaint be transferred to a different circuit for resolution.

I have conducted the initial review of this complaint required by 28 U.S.C. § 352(a) and Rule 11 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings ("the Rules"). I conclude that all of the alleged misconduct is "directly related to the merits of a decision or procedural ruling." Errors (or alleged errors) in statements made during oral argument or in a final written opinion of the court of appeals occur from time to time, regrettably, but they are subject to correction through the process of petitions for rehearing and rehearing en banc, or through a petition for a writ of certiorari filed in the U.S. Supreme Court. The complaint makes no allegation of problems such as extra-judicial bias, reliance on information that was not properly part of the record, procedural irregularities with respect to the operations of the court of appeals, or anything else identified in either the Rules or the Report to the Chief Justice on the Implementation of the Judicial Conduct and Disability Act of 1980 ("the Breyer Commission

Report"). See, e.g., Breyer Commission Report at 54–56. I consider this to be so clear that there is no need to transfer this matter to the Judicial Council of another circuit, and so that motion is denied.

The judicial-misconduct complaint in this matter is hereby dismissed.