

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

June 6, 2012

FRANK H. EASTERBROOK
Chief Judge

No. 07-12-90032

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant filed a civil suit in 2004. He failed to pay the required fees, and the suit was dismissed. The court of appeals dismissed his appeal as frivolous. More than seven years later, he asked the district court to reopen the litigation. The judge originally assigned to the case had died, and the district court's executive committee assigned the matter to a judge drawn at random. That judge then denied complainant's motion. Complainant maintains that this action constitutes misconduct.

Any complaint that is "directly related to the merits of a decision or procedural ruling" must be dismissed. 28 U.S.C. §352(b)(1)(A)(ii). See also Rule 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. "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 allegations of this complaint fit that description. That complainant contends that the judge should have provided a better explanation does not matter. Section 352(b)(1)(A)(ii) applies to how the judge explains the decision, no less than to the decision's substance. See *In re Complaint of Judicial Misconduct*, 517 F.3d 558 (Jud. Conf. 2008).

Complainant asserts that the judge must be biased against him. But adverse judicial decisions do not imply bias. See *Liteky v. United States*, 510 U.S. 540 (1994). Every suit, indeed every motion within a suit, produces a loser as well as a winner. Identifying winners and losers is a judge's job, not a basis for thinking that the judge is biased. A

litigant's belief that he should have prevailed may imply an issue for the court of appeals; it does not imply bias. Complainant does not offer any reason other than the adverse decisions for thinking the judge biased. And, to the extent that complainant may believe that the judge was obliged to let him try again with still another district judge, he is incorrect. Some state systems allow a litigant an opportunity to require a case's reassignment to a different judge; the federal system does not. A judge assigned to a case does not commit misconduct by entering a dispositive order.