

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

December 16, 2009

FRANK H. EASTERBROOK
Chief Judge

No. 07-09-90135

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant, a federal prisoner following his guilty plea, accuses the district judge of misconduct for informing him that the acts of which he was charged are criminal, and for not vacating his plea and sentence.

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.

The district judge’s judgment and sentence were appealed, and the court of appeals concluded that the appeal was frivolous. Complainant repeats many of his arguments without mentioning that they have already been rejected by the court of appeals. Complainant has filed a motion in the district court under 28 U.S.C. §2255 and will be entitled to appeal should that motion be denied. Section 352(b)(1)(A)(ii) applies to this process, as it did to the original conviction and sentence.

Complainant contends that the district judge should have recused himself. Deciding whether to participate in a case is itself a judicial decision covered by §352(b)(1)(A)(ii). See *Report* at 146. The remedy for any judicial error lies in the court of appeals rather than the Judicial Council, which is an administrative body.