

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

September 15, 2011

FRANK H. EASTERBROOK
Chief Judge

No. 07-11-90055

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant, a prisoner, contends that the district judge is biased against him, has engaged in *ex parte* contacts with prison officials, and by failing to rule in his favor has allowed the prison to subject him to torture.

A similar complaint filed three months ago was dismissed under 28 U.S.C. §352(b)(1)(A)(ii), which provides that any complaint “directly related to the merits of a decision or procedural ruling” must be dismissed. 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 current complaint does not mention §352(b)(1)(A)(ii) or attempt to demonstrate how it can be reconciled with that statute—which, as I informed complainant last time, covers not only substantive decisions but also a decision not to recuse, which is a “procedural ruling”. Moreover, the only basis for the assertion that the judge is biased is the fact that the judge decided adversely to complainant’s position. Adverse decisions do not support an inference of prejudice. See *Liteky v. United States*, 510 U.S. 540 (1994).

Complainant’s assertion that the judge had *ex parte* contacts with a defendant is outside the scope of §352(b)(1)(A)(ii), but this aspect of the complaint must be dismissed under §352(b)(1)(A)(iii) because it is not supported by any factual allegations. Suspicions and surmises are not facts.

Complainant’s assertion that the subject judge lied to me before I dismissed the previous complaint also is outside the scope of §352(b)(1)(A)(ii), but likewise is not supported by any facts. Nor would any such support be possible. Before dismissing the previous complaint I had no contact with, and received no information from, the subject

judge. The only information on which I relied was in the complaint itself and the district court's docket sheets, which revealed the status of the suits that complainant had filed. The complaint was dismissed because it was transparently defective under §352(b)(1)(A)(ii), not because I was misled by the district judge.

My previous decision told complainant that the way to obtain review of adverse decisions is to appeal, not to file a complaint under the 1980 Act. Any further complaint that fails to make a serious effort to address §352(b)(1)(A)(ii) will be dismissed summarily, and I will order complainant to show cause why the Judicial Council should not enter an order that will curtail his apparently frivolous invocations of the 1980 Act.