

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

January 15, 2013

FRANK H. EASTERBROOK
Chief Judge

No. 07-13-90004

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant, a federal prisoner, contends that the district judge engaged in misconduct by denying multiple motions in his litigation. For example, after complainant contended that his lawyer had provided ineffective assistance, the judge declined to appoint a different lawyer to assist complainant in supporting that position. Another example: complainant filed a collateral attack under 28 U.S.C. §2255, lost, and then followed that defeat with numerous motions under Fed. R. Civ. P. 60(b); the judge dismissed these as unauthorized successive collateral attacks, and complainant insists that the judge was mistaken.

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 remedy for judicial error lies in appeal. Complainant did appeal, repeatedly, and the court of appeals not only ruled against him but also concluded that his many motions and appeals were frivolous and pestiferous. The court of appeals has entered an order barring complainant from pursuing civil litigation, including further collateral challenges to his conviction and sentence, until he pays all sanctions that have been imposed. Complainant has not paid, so he remains subject to that order.

The current complaint appears to be an effort to evade the filing restriction by moving to a different forum. The 1980 Act does not authorize the Judicial Council to entertain challenges to a judge's substantive or procedural decisions, however, so the complaint must be dismissed. Any further complaint that does not make a serious effort to show how it is compatible with §352(b)(1)(A)(ii) will be dismissed summarily, and I will order complainant to show cause why the Council should not curtail his misuse of the 1980 Act. See Rule 10(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

I have not overlooked complainant's assertion that the judge made inappropriate remarks during the proceedings. Complainant does not give concrete examples, however; the assertion appears to be part of his strategy of vilifying persons who make unwelcome decisions. Nor have I overlooked complainant's assertion that the district judge in question denies almost all motions by other prisoners under §2255. Such a contention is covered by §352(b)(1)(A)(ii). All district judges in the entire federal system deny most motions under §2255. This reflects the fact that defendants have ample means to vindicate their rights at trial and on appeal; the number of errors that escape this process and justify correction under §2255 is much smaller than the number of prisoners who file motions hoping for release. Determining which post-conviction motions are meritorious requires an analysis of each motion's merit, one case at a time, which is not a subject within the scope of the 1980 Act.