

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

May 2, 2013

FRANK H. EASTERBROOK
Chief Judge

Nos. 07-13-90030 to -90032

IN RE COMPLAINT AGAINST THREE JUDICIAL OFFICERS

MEMORANDUM

Complainant, a state prisoner, asked for federal relief under 28 U.S.C. §2254. The district judge denied his petition, and complainant accused the judge of misconduct for failing to read the state court's decision before acting. I dismissed that complaint (No. 07-13-90018) on the authority of 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). I also informed complainant that he could not avoid the statute by asserting that the judge failed to read essential documents, when the only basis for the assertion was the adverse decision itself.

Complainant then filed a petition for a writ of mandamus, asking the court of appeals to remove the district judge from the case. The court denied that petition, and the current complaint accuses the three circuit judges of misconduct for failing to read the district court's decision and the petition.

Complainant has no more evidence of non-reading by the appellate judges than by the district judge. All he has is a belief that he should have won, so some misconduct must lie behind his loss. That is the precise sort of argument that §352(b)(1)(A)(ii) blocks. Judges disappoint one side or the other in every case; a litigant's belief that he

should have fared better may support an appeal or petition for certiorari but does not remotely imply judicial misconduct.

Complainant asserts that, because the district court's decision was on the merits for the purpose of §352(b)(1)(A)(ii), the appellate decision cannot have been. That is illogical. Merits decisions by district judges usually lead to merits decisions by appellate judges. At all events, §352(b)(1)(A)(ii) covers procedural decisions as well as those resolving the merits of a suit. An order denying a petition for mandamus usually is procedural; it leaves the status of the litigation unaffected.

Both of the complaints are grounded on unfounded assertions that the judges have not read essential documents. I told complainant before that §352(b)(1)(A)(ii) applies. Any further complaint that does not make a serious effort to demonstrate compatibility with §352(b)(1)(A)(ii) will be dismissed summarily, and I will order complainant to show cause why the Judicial Council should not curtail his apparently frivolous invocations of the 1980 Act. See Rule 10(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.