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

July 21, 2009

FRANK H. EASTERBROOK
Chief Judge

No. 07-09-90078

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant was the plaintiff in several suits filed in a federal district court. He was ill-served by his lawyers, who made several procedural errors that cost him any chance of prevailing. He now contends that the district judge committed misconduct by not ruling in his favor and displayed bias by concluding that one or more of his complaints failed to state a claim on which relief may be granted, and that another could not be litigated at all in light of the *res judicata* effect of earlier decisions.

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 right forum for the arguments complainant now makes was the court of appeals. Two appeals were filed; one was partly successful. Counsel's failure to protect complainant's rights may be a ground of malpractice litigation against the lawyer; it is not a ground of action under the 1980 Act.

A declaration that a legal pleading does not state a claim does not display bias. Failure to state a claim is a recognized ground of decision. See Fed. R. Civ. P. 12(b)(6). Res judicata likewise: The law of preclusion rests on the proposition that one round of litigation is enough. Laymen often misunderstand legal language and procedure, which is unfortunate but not an ethical problem for the judge. The only basis claimant offers for suspecting bias is the adverse decisions. Yet half of all litigants lose their cases, and many of those losers believe that they should have prevailed. A judge's job is to decide between competing positions; that the judge has done this, and one side has emerged empty handed, does not demonstrate bias. See *Liteky v. United States*, 510 U.S. 540 (1994).