

THE JUDICIAL COUNCIL OF THE SEVENTH CIRCUIT

219 South Dearborn Street
Chicago, Illinois 60604

July 5, 2011

FRANK H. EASTERBROOK
Chief Judge

No. 07-11-90036

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant has recently filed two suits in federal district court. The district judge assigned to the second suit dismissed it as duplicative of the first, which had been commenced in a different district.

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. If it was error to dismiss the second suit, the remedy is by appeal rather than a complaint under the 1980 Act.

Complainant asserts that the judge must have had “an illicit or improper motive.” He offers no evidence, however. An adverse decision does not show that the judge was biased. Every case produces at least one loser, and the loser cannot convert the fact of the adverse decision into a claim of misconduct without some evidence that the judge behaved improperly. See *Liteky v. United States*, 510 U.S. 540 (1994). What is more, a judge’s decision to serve in a case, rather than recuse, is itself a procedural ruling covered by §352(b)(1)(A)(ii) unless the judge knows that disqualification is mandatory, see *Report* at 146—and complainant does not contend that he has any reason to believe that the judge was subjectively aware of a disqualifying event.