

THE JUDICIAL COUNCIL OF THE SEVENTH CIRCUIT

219 South Dearborn Street  
Chicago, Illinois 60604

September 22, 2011

FRANK H. EASTERBROOK  
Chief Judge

No. 07-11-90062

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

The Clerk of the Supreme Court deemed a petition for certiorari untimely and returned it. The litigant asked the Court to direct the Clerk to accept and file the petition; the Court declined. The litigant then filed a suit in a federal district court against employees of the Clerk's office, accusing them of defrauding the Justices. The district judge dismissed this suit, observing that a district court cannot review a decision by the Supreme Court—that the litigant's remedy was his request that the Justices direct the Clerk to file the petition, not an independent suit. The litigant now accuses the district judge of misconduct for not ruling in his favor.

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.

According to complainant, the district judge should have ruled in his favor and failure to do so demonstrates bias or prejudice. Section 352(b)(1)(A)(ii) cannot be avoided so easily. *Liteky v. United States*, 510 U.S. 540 (1994), holds that adverse judicial decisions do not demonstrate bias. Every suit produces at least one loser. If the judge errs, the remedy lies in an appeal, not a complaint under the 1980 Act.