

THE JUDICIAL COUNCIL OF THE SEVENTH CIRCUIT

219 South Dearborn Street
Chicago, Illinois 60604

April 3, 2012

FRANK H. EASTERBROOK
Chief Judge

No. 07-12-90016

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant, the plaintiff in a pending civil case, has asked the district judge several times to recruit counsel to assist her. Complainant contends that the judge committed misconduct by denying these motions.

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. Whether to recruit counsel is a procedural step in the litigation, governed by legal rules. See *Pruitt v. Mote*, 503 F.3d 647 (7th Cir. 2007) (en banc). If the district judge has erred, the remedy lies in an appeal from the district court’s final decision.

In denying complainant’s motions, the district judge referred to “appointment” rather than “recruitment” of counsel. This is technically incorrect, see *Mallard v. United States District Court for Southern District of Iowa*, 490 U.S. 296 (1989), but is nonetheless a common expression. Section 352(b)(1)(A)(ii) applies to how a judge explains the decision, no less than to the decision’s substance. See *In re Complaint of Judicial Misconduct*, 517 F.3d 558 (Jud. Conf. 2008).