

THE JUDICIAL COUNCIL OF THE SEVENTH CIRCUIT

219 South Dearborn Street
Chicago, Illinois 60604

April 10, 2012

FRANK H. EASTERBROOK
Chief Judge

No. 07-12-90020

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant, the plaintiff in a pending civil suit, contends that the judge committed misconduct by not ordering the clerk's office to furnish her with a copy of her own original complaint at public expense.

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. Complainant filed a motion, which the judge denied. If that decision was incorrect, and causes prejudice to complainant, it can be reviewed on appeal from the final decision.

Complainant believes that the judge must be biased against her. The judge dismissed her complaint, but the court of appeals reversed with respect to one claim. Complainant contends that the incorrect dismissal, plus the adverse decision on the motion for a free copy of the original complaint, establish prejudice. The Supreme Court has held, however, that adverse decisions, even if erroneous, do not imply bias or prejudice. See *Liteky v. United States*, 510 U.S. 540 (1994). Complainant offers no evidence of bias other than the adverse decisions. Yet every case has a losing side, and a given litigant also may suffer defeat at intermediate steps along the way. A judge inevitably

makes rulings that disappoint litigants, all of whom may believe that they are entitled to prevail. The existence of these rulings shows that the judge is doing his job; it does not imply bias or favoritism.

Although complainant asks the Judicial Council to assign a different judge to the case, the Council is an administrative rather than a judicial body. A judge's conclusion that he is entitled to continue serving in a given case is a procedural ruling within the scope of §352(b)(1)(A)(ii). See *Report* at 146. The court of appeals, not the Judicial Council, is the proper forum for review of such decisions.