

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

August 28, 2012

FRANK H. EASTERBROOK  
Chief Judge

No. 07-12-90062

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant is a state prisoner. In 2009 he sought federal collateral review of his conviction and sentence. A district judge dismissed his petition as untimely. Almost three years later, complainant filed a motion under Fed. R. Civ. P. 60, asking the district court to entertain the petition on its merits. The district judge denied this motion as late, and on the further ground that it is an unauthorized successive petition for collateral review. Complainant contends that these decisions constitute misconduct.

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 asserts that the district judge must be biased against him, but this contention relies exclusively on the adverse decisions. Every suit, indeed every motion, produces a loser as well as a winner. Many of the losers think that they should have prevailed. That may provide a ground of appeal but it does not establish bias. See *Liteky v. United States*, 510 U.S. 540 (1994). Section 352(b)(1)(A)(ii) applies fully to this aspect of complainant’s grievance. See *Report* at 146.