

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

January 17, 2007

FRANK H. EASTERBROOK
Chief Judge

No. 07-7-352-1

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant, the plaintiff in a civil action, contends that the magistrate judge who is handling pretrial proceedings committed judicial misconduct by refusing to enter a default judgment against two of the defendants. Plaintiff contends that they have been served with process and failed to answer the complaint. Docket entries 49 and 50 support this belief. (Each entry states “SUMMONS Returned Executed” for the defendant in question and specifies the date by which that defendant’s answer is due.) But the magistrate judge apparently concluded that these entries are mistaken, for he denied the motion for a default and reissued each summons. The Marshal Service has returned each new summons unexecuted (docket entries 78 and 79).

Some error has occurred, though whether by the Marshal Service, the Clerk of Court, or the magistrate judge is impossible to determine from the docket alone. But it does not matter for current purposes where the error lies, for a judicial-misconduct complaint is not a means to obtain review of a judge’s rulings. Any complaint that is “directly related to the merits of a decision or procedural ruling” must be dismissed. 28 U.S.C. §351(b)(1)(A)(ii). The allegations of this complaint fit that description. “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 complainant's arguments can be presented to the district judge and on appeal. That is a sufficient reason to dismiss this complaint under §351(b)(1)(A)(ii). Complainant's further request that proceedings be reassigned from the magistrate judge to a district judge likewise is merits-related—and the complainant does not appreciate that this case remains pending before a district judge. The parties have not consented to final decision by a magistrate judge, see 28 U.S.C. §636(c), so all recommendations by the magistrate judge remain open to review by a district judge as well as by the court of appeals.