

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

November 5, 2007

FRANK H. EASTERBROOK
Chief Judge

No. 07-7-352-42

IN RE COMPLAINT AGAINST FOUR JUDICIAL OFFICERS

MEMORANDUM

Complainant sought federal collateral relief from his state conviction. A federal district judge denied his petition under 28 U.S.C. §2254. A panel of the court of appeals recruited counsel to assist him with the appeal, heard oral argument, and affirmed in a published opinion. Counsel then withdrew, informing the court that there were no non-frivolous grounds for additional review. After a judge of the court of appeals denied complainant's motion to compel counsel to proceed further (or to recruit a new lawyer), he filed *pro se* a petition for rehearing en banc. That petition was denied.

The current complaint insists that the district court, and the three-judge panel of the court of appeals, overlooked or misunderstood arguments that complainant believes entitle him to relief, and that the judges should have "corrected the record" to include material that complainant says is pertinent. But under the Judicial Conduct and Disability Act of 1980 any complaint "directly related to the merits of a decision or procedural ruling" must be dismissed. 28 U.S.C. §352(b)(1)(A)(ii). "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). Complainant's allegations fit that description. The remedy for an adverse decision in the district court is an appeal, and the remedy for an adverse decision in the court of appeals is a petition for a writ of certiorari. The Judicial Council, which administers the 1980 statute, does not act in a judicial capacity and does not replace or supplement these procedures.

Complainant attempts to evade these rules by asserting that the four judges failed to implement several ethical canons, such as upholding the independence and impartiality of the judiciary. (The canons on which complainant relies were adopted by the Supreme Court of Wisconsin for that state's judiciary; they do not apply to federal courts, but the Code of Conduct for United States Judges contains similar rules.) The only basis for the allegation that the judges have acted unethically, however, is the adverse decisions. Complainant does not provide any reason to believe that the judges received *ex parte* submissions or otherwise acted unethically in any other concrete manner. They simply ruled against complainant on the merits (as well as procedural steps affecting the contents of the record), and §352(b)(1)(A)(ii) applies to such a situation no matter how the losing litigant's grievance is couched.