

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

July 23, 2008

FRANK H. EASTERBROOK
Chief Judge

No. 07-08-90063

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant is disappointed that a district judge has denied his petition for a writ of habeas corpus. He has filed a notice of appeal, an application for a certificate of appealability, and a complaint under the Judicial Conduct and Disability Act of 1980. The complaint, which concludes "Appellate Brief to Follow", is nothing but a cover sheet and a copy of the application for a certificate of appealability.

Pro se litigants may be confused about what documents they need to file. Complainant can rest assured that it is unnecessary to use the 1980 Act to obtain relief from an adverse decision in the district court. Indeed, it is *impossible* to use the 1980 Act to obtain review of an adverse decision. The Judicial Council is an administrative rather than a judicial body. That's one reason why 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 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).

Perhaps complainant thinks that his situation is exceptional. The application for a certificate of appealability implicitly contends that the district judge should have recused himself because he is a friend and former colleague of the state judge who presided in complainant's prosecution. That judges know one another does not require recusal. Nor can a litigant remove a judge (as complainant supposes) by filing a complaint, either with the Judicial Council or with the Department of Justice (as complainant has done). Litigants cannot pick their judges, and mandatory recusal every time a litigant complains would allow just that. What is more, a decision whether to serve in a judicial capacity in a particular dispute is itself a "procedural ruling" that cannot be reviewed through the 1980 Act. *Report to the Chief Justice* at 146.