

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

October 14, 2010

FRANK H. EASTERBROOK
Chief Judge

No. 07-10-90066

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant, the plaintiff in a pending civil suit, contends that the district judge committed misconduct by treating his "Notice of Interlocutory Appeal" as a notice of appeal and forwarding it to the court of appeals. Complainant says that he meant the document as a petition for the district judge's permission under 28 U.S.C. §1292(b) and did not plan to seek appellate review if the petition were denied. Complainant also asserts that the district judge committed misconduct by intercepting and ruling on letters and motions that complainant addressed to the district court's chief judge.

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. They concern procedural steps in a suit.

Complainant apparently believes that he can choose which judge will act on his submissions, but, once a case has been assigned to a particular district judge, a litigant cannot select a different judge by changing the name on an envelope or other document. That complainant thinks the district judge has committed misconduct does not require the judge's recusal; adverse rulings differ from bias. See *Liteky v. United States*, 510 U.S. 540 (1994). At all events, a judge's decision to continue serving in a given case is itself covered by §352(b)(1)(A)(ii).