

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

February 15, 2011

FRANK H. EASTERBROOK
Chief Judge

No. 07-11-90015

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant is the plaintiff in civil litigation against multiple state and federal officials. Because complainant did not pay the filing fee for new civil litigation, the district judge screened the complaint and determined that it would not be served, because the claims are frivolous. The judge then certified that the appeal is frivolous, so that complainant cannot appeal *in forma pauperis* unless the court of appeals grants permissions, which it has not done. Complainant has moved to dismiss her appeal under Fed. R. App. 42(b) and has attached her motion as a statement of her grievances against the district judge.

Complainant believes that the judge should have allowed an amendment of the complaint and should not have certified that the appeal is frivolous. Complainant also believes that the judge's statement of reasons why the appeal is frivolous contains an error. This leads complainant to assert that the judge has demonstrated "extreme bias, unprofessional conduct, and an inference of malice".

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. If the district judge has erred, the remedy lies in the court of appeals rather than the Judicial Council, which is an administrative body.

Section 352(b)(1)(A)(ii) applies to a judge's explanation of the rulings, as well as to the bottom line. See *In re Complaint of Judicial Misconduct*, 517 F.3d 558 (Committee on Judicial Conduct & Disability 2008). Choosing how to explain a decision is part of the judicial function. Section 352(b)(1)(A)(ii) also applies to a judge's decision to continue presiding, see *Report* at 146, though I add that complainant is wrong to believe that anything in the subject judge's actions implies a need to recuse. A judge's conclusion that a suit is frivolous (and, in complainant's situation, that a litigant has filed multiple frivolous suits) reflects the judge's appreciation of documents in the record; it does not imply bias. See *Liteky v. United States*, 510 U.S. 540 (1994). Otherwise the loser in any suit could say something along the lines of: "I should have won; instead I lost; therefore the judge must have been biased." All litigation produces losers and winners, and many of the losers believe that they should have prevailed; this does not imply bias against the losers. And some suits are indeed frivolous. Stating this likewise does not suggest bias. Whether a particular suit *is* frivolous is a question for appeal.