

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

July 18, 2011

FRANK H. EASTERBROOK  
Chief Judge

No. 07-11-90039

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant has recently filed two suits in federal district court. He contends that the magistrate judge assigned to the first suit failed to ensure that process was issued on the date that the complaint was filed and must be biased against him.

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 any delay in issuing process was a mistake, the remedy was by request to the district judge rather than a complaint under the 1980 Act. (But there was no error. Complainant tells me that, the day after filing suit, he stopped payment on the check for the filing fee. Later he closed the account. A court is not required to process any suit when the plaintiff fails to pay required fees.)

Complainant asserts that the judge must have had “an illicit or improper motive.” He offers no evidence, however. An adverse decision does not show that the judge was biased. Every case produces at least one loser, and the loser cannot convert the fact of the adverse decision into a claim of misconduct without some evidence that the judge behaved improperly. See *Liteky v. United States*, 510 U.S. 540 (1994). What is more, a judge’s decision to serve in a case, rather than recuse, is itself a procedural ruling

covered by §352(b)(1)(A)(ii) unless the judge knows that disqualification is mandatory, see *Report* at 146—and complainant does not contend that he has any reason to believe that the judge was subjectively aware of a disqualifying event.

The allegations of this complaint are substantially similar to those made against the judge who has been assigned to complainant's second suit. Two weeks ago I dismissed a complaint against that judge (No. 07-11-90036). The current complaint does not mention either that decision or §352(b)(1)(A)(ii). Both No. 07-11-90036 and this complaint are frivolous. Any further complaint that does not make a serious effort to show how it is compatible with §352(b)(1)(A)(ii) will be dismissed summarily, and I will order complainant to show cause why the Judicial Council should not take steps to curtail his abuse of the 1980 Act's processes. See Rule 10(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.