

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

November 21, 2011

FRANK H. EASTERBROOK  
Chief Judge

No. 07-11-90070

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant is the plaintiff in a civil suit recently decided by a district court. He contends that the judge committed misconduct by not addressing all of the claims he presented in the suit, and by entering a decision despite an obligation to recuse himself.

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. Whether a judge chooses to write an opinion discussing each claim separately is “directly related to” the decision. And the *Report to the Chief Justice* concluded that an assertion that the judge should have recused in a particular case also is covered by §352(b)(1)(A)(ii), unless the judge knows that he is disqualified. See *Report* at 146.

Complainant asserts that the judge should have recused himself in this case because he recused himself in an earlier suit that complainant had filed. But complainant does not tell me what led to the earlier recusal and does not provide any reason for thinking the judge disqualified in the current proceeding. The sole argument appears to be that the judge has acted inconsistently, so one of the decisions must be wrong. Yet apparent

inconsistency may be the result of error or changed circumstances; it need not show any form of misconduct.

This is the second time in the current month that complainant has charged the subject judge with misconduct for his handling of this litigation. My order dismissing his first (No. 07-11-90066) informed complainant about §352(b)(1)(A)(ii). The current complaint ignores both §352(b)(1)(A)(ii) and my decision. If complainant should file a future charge under the 1980 Act without making a serious effort to show how it is compatible with §352(b)(1)(A)(ii), I will dismiss it summarily and direct complainant to show cause why the Judicial Council should not curtail his apparently frivolous invocation of the Act's procedures. See Rule 10(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.