

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

October 31, 2012

FRANK H. EASTERBROOK
Chief Judge

Nos. 07-12-90081 & -90082

IN RE COMPLAINT AGAINST TWO JUDICIAL OFFICERS

MEMORANDUM

Complainant filed a civil suit. After a procedural victory in the court of appeals, the district judge held a bench trial and ruled against her; the court of appeals affirmed. Complainant then demanded that the United States pay damages under the Federal Tort Claims Act for what she believes are the errors of the district judge in that suit. The United States rejected that claim; complainant filed a second suit, which was dismissed (by a different judge) as frivolous. (The Federal Tort Claims Act does not cover judicial errors—and at all events the court of appeals had already held that the first judge did not err.) Complainant appealed and lost again. Undeterred, she filed a third suit on the same theory as the second. The district judge told the United States that it need not respond. Complainant took the lack of response as a basis for demanding a default judgment, but the district judge denied this motion and told complainant that this suit, too, was frivolous. Complainant now accuses both district judges of misconduct.

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. The remedy for a judicial error is by appeal. Complainant did appeal, and the court of appeals found that no error occurred. Appellate decisions cannot be collaterally attacked in proceedings under the 1980 Act.

Complainant asserts that both judges should have recused themselves. The first case has been closed for five years. It was resolved long before complainant filed her motion for recusal; there was nothing the first judge could have recused himself from. Moreover, as the second judge observed, complainant appears to believe that any litigant can obtain a change of judge on demand. Some state systems permit this; the federal system does not. Complainant does not offer any basis for recusal other than the adverse decisions, which are insufficient. See *Liteky v. United States*, 510 U.S. 540 (1994). And even if this is mistaken, §352(b)(1)(A)(ii) applies to a judge's decision that recusal is unnecessary. *Report* at 146. On this subject, as with other procedural rulings, the court of appeals rather than the Judicial Council is the appropriate reviewing body. The court of appeals has made its decisions, and the Supreme Court of the United States denied complainant's petition for certiorari. No further review is available.