

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

January 23, 2013

FRANK H. EASTERBROOK
Chief Judge

No. 07-13-90005

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant is the plaintiff in several civil cases. He contends that the district judge assigned to one of these cases committed misconduct by granting the defendants' motion for sanctions two days after he had filed a notice of appeal in a different case.

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).

Complainant contends that he is not contesting the district judge's ruling on sanctions. Instead complainant maintains that the district judge violated the Code of Conduct for United States Judges by granting the defendants' motion in order to penalize him for filing a notice of appeal in a different case. The award of sanctions could be a "penalty," however, only if the motion for sanctions would have been denied had he not appealed the other case. If defendants are entitled to sanctions for frivolous litigation, as they contend and the subject judge found, then the notice of appeal in the other case could not have made him worse off in this one. This means that complainant necessarily is attacking the propriety of the award. The way to do that is by an appeal, not by a complaint to the Judicial Council.

In addition to dismissing the complaint under §352(b)(1)(A)(ii), I also dismiss it under §352(b)(1)(A)(iii) because it is not supported by factual allegations. Complainant's belief that the subject judge held the notice of appeal against him is nothing but conjecture. A different judge entered the order being appealed. Although the subject judge *might* have learned of the appeal, so could any member of the public by searching the docket. Complainant does not provide any reason why the subject judge would have been trolling the docket sheets, looking for notices of appeal that he could penalize by making adverse decisions in other suits. Nor does complainant offer any reason why a judge would want to do so. Appeals are an ordinary part of the legal process; no district judge reacts adversely to them—let alone trying to penalize a litigant for an appeal in some other judge's case. All complainant offers is the fact that the notice of appeal in one suit came two days before the award of sanctions in a different suit. *Post hoc ergo propter hoc* is the name of a logical error; it is not a theory of causation.