

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

February 14, 2013

FRANK H. EASTERBROOK
Chief Judge

No. 07-13-90011

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant was the plaintiff in a civil suit that the district judge transferred to a different district. Complainant asserts that the transfer constitutes 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 complaint concerns the propriety of the transfer order, a procedural ruling. Although transfer orders cannot be appealed immediately (the Seventh Circuit dismissed complainant’s appeal), they can be contested in the transferee district, and if necessary on appeal to the court of appeals with jurisdiction of that district. The Judicial Council does not supply an alternative forum for review.

Complainant asserts that the subject judge committed misconduct by serving in a judicial capacity. The complaint names the subject judge as a defendant. This appears to be an effort to influence who will decide the merits—indeed, that seems to be the point of the underlying litigation. Complainant does not want his suit to be heard by the judges of the transferee district (where venue is appropriate), so he filed in a different district; then, in an effort to determine which judge would hear his case, he named some judges as defendants. The subject judge rightly disregarded this maneuver. Litigants are

not entitled to pick their judges, either directly or by suing any judge they want to knock off the case. Judicial immunity means that the judge faces no prospect of liability, so the judge is not interested in the outcome and may properly serve. At all events, a judge's decision that he or she is entitled to act in a judicial capacity is itself a procedural ruling, covered by §352(b)(1)(A)(ii). See Rule 3(h)(3)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.