

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

June 26, 2013

FRANK H. EASTERBROOK  
Chief Judge

No. 07-13-90041

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant is the plaintiff in a civil suit that was removed to federal court by the defendant under the diversity jurisdiction and dismissed by the district judge, who concluded that the complaint lacked plausible allegations of causation. Complainant asserts that this shows that the district judge is incompetent and should be removed.

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 way to present a contention that the judge erred is by appeal, not by a complaint under the 1980 Act.

Section 352(b)(1)(A)(ii) cannot be avoided by asserting that the judge is incompetent. Every lawsuit produces at least one loser, who often sincerely believes that he or she should have prevailed. That the loser is disappointed shows nothing about the judge’s capacity, however—nor does the fact that at oral argument the judge asked only three questions before deciding that the complaint is deficient. Often a deficiency is apparent from the papers; that the judge allowed a brief oral argument does not call into question the judge’s fitness for office.