

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

August 22, 2013

FRANK H. EASTERBROOK
Chief Judge

No. 07-13-90059

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant filed a civil suit in state court and then purported to remove it to federal court. A district judge promptly remanded it, observing that the removal was improper procedurally (only defendants can remove suits from state courts) and that the federal court lacks subject-matter jurisdiction. Complainant accuses the district judge 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. A remand order is a procedural decision.

Complainant thinks that the judge in question should not have made a ruling, because he was appointed by a President who complainant has (in other proceedings) accused of misconduct. This assertion does not satisfy the standards for recusal under 28 U.S.C. §455. Judges are independent of the Presidents who appointed them. What is more, a judge’s decision that he is qualified to resolve the suit is itself a procedural ruling for the purpose of §352(b)(1)(A)(ii). See Rule 3(h)(3)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Last year complainant accused two other judges of misconduct. My order in that proceeding (Nos. 07-12-90028 and -90029) informed complainant about §352(b)(1)(A)(ii). His current complaint does not mention either the statute or my order. Any further complaint that does not make a serious effort to show how it is compatible with §352(b)(1)(A)(ii) will be dismissed summarily, and I will order complainant to show cause why the Judicial Council should not curtail his apparently frivolous invocations of the 1980 Act. See Rule 10(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.