

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

January 14, 2009

FRANK H. EASTERBROOK
Chief Judge

No. 07-08-90111

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant is the principal investor in, and manager of, a business that has been involved in federal litigation not only as the plaintiff in suits but also as a debtor in bankruptcy. According to the complaint, an affidavit and deposition during the bankruptcy revealed that *ex parte* contacts between the judge and counsel for the adversary of complainant's firm had occurred during one of the suits that preceded the bankruptcy.

I reviewed the extensive documents tendered with the complaint and saw in them neither evidence of *ex parte* contacts nor anything giving rise to a suspicion that such contacts might have occurred. To be sure that my understanding was correct, I conducted a limited inquiry under 28 U.S.C. §352(a) and Rule 11(b) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. I asked for responses from the judge and from three lawyers who had participated in the proceedings. The judge denied that any *ex parte* contacts had occurred. The lawyer whose statements in the deposition apparently led complainant to make his accusations expressed bafflement about how any of his statements could have been so understood. He, too, denied that there had been any off-the-record contacts.

Complainant has not offered any evidence that unauthorized *ex parte* contacts occurred. The documents on which he bases his suspicions do not support them, and everyone in a position to know the truth denies that there have been *ex parte* contacts. This complaint therefore is dismissed because the allegations are conclusively refuted by objective evidence. (I would dismiss the complaint even if this evidence were not "conclusive," because complainant's charges are "incapable of being established through investigation." 28 U.S.C. §352(b)(1)(A)(iii).)