

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

October 4, 2012

FRANK H. EASTERBROOK
Chief Judge

No. 07-12-90069

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant was convicted of several federal crimes. After his convictions were affirmed by the court of appeals, the district judge ordered him to report to prison on a particular date. Statements complainant made in post-judgment motions led the judge to remind complainant that this was a firm date, which would not be delayed. Complainant asserts that the judge committed misconduct during two hearings.

According to the complaint, the judge stated that "he would personally take measures against the undersigned and his family." A threat to injure third persons if a litigant does not fulfill his legal responsibilities would constitute misconduct in office, unless the injury was the result of the litigant's own conduct. (For example, a defendant might use title to the family home as collateral for a bail bond; if the defendant became a fugitive, the family would suffer injury when the collateral was forfeited.)

I could not resolve this complaint summarily and conducted a limited inquiry. See Rule 11(b) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. The district judge furnished me with transcripts of the proceedings in question. These show that complainant's accusations are false. I now dismiss the complaint under 28 U.S.C. §352(b)(1)(A)(iii), because it is conclusively refuted by objective evidence.

The only statement by the judge during either hearing that is remotely threatening is this: "I expect you to surrender on that date or I will take other action." Neither this statement nor any other mentions complainant's family or another third party. And the

judge's actual statement is not misconduct. The usual responses to failure to report are (1) a bench warrant authorizing the Marshals Service to arrest the defendant and transport him to prison, plus (2) a referral to the United States Attorney for potential criminal prosecution (failure to report to prison is a felony). The judge did not spell these out for complainant, but lack of detail is not misconduct.

Complainant has been convicted in three criminal prosecutions. The crime in this particular prosecution is forgery. He also was a frequent filer of frivolous civil suits until the court of appeals entered a *Mack* order blocking civil litigation until complainant paid all outstanding awards of sanctions. It is evident from this background that complainant is in the habit of making false statements. The current complaint is another example. If complainant believes that he can evade the *Mack* order by moving his false or frivolous contentions from civil suits to the Judicial Council under the Judicial Conduct and Disability Act of 1980, he is mistaken. Any further false charges by complainant will lead me to order him to show cause why the Judicial Council should not curtail his misuse of the 1980 Act's processes.