

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

April 9, 2009

FRANK H. EASTERBROOK
Chief Judge

Nos. 07-09-90055 & -90056

IN RE COMPLAINT AGAINST TWO JUDICIAL OFFICERS

MEMORANDUM

Complainants are defendants in civil litigation pending in a federal district court. A magistrate judge recommended the entry of an injunction to prevent misuse of trade secrets; the district judge agreed with that recommendation and entered the injunction. The magistrate judge later recommended that sanctions be awarded; the district judge has not yet acted on that recommendation.

Complainants assert that the magistrate judge must be incompetent, because he has made proposals adverse to their interests and acted too quickly (from which complainants infer that he must not have considered the evidence). Complainants inconsistently assert that the suit has dragged out for too long and that, because their restrictive covenants have expired, they are not obliged to respect the plaintiff's trade secrets any longer. They say that the district judge is incompetent because he has "rubber stamped" the magistrate judge's recommendations to date.

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). The allegations of this complaint fit that description. "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 entry of an injunction is squarely on the merits, and sanctions, if awarded, relate to both the merits and procedural rulings. If the district court misunderstood the facts or the law, as complainants believe, these decisions may be challenged in the court of appeals. Indeed, the preliminary injunction was contested on appeal, and the decision was substantially affirmed. The Judicial Council, an administrative rather than a judicial body, does not review such decisions.

Complainants are represented by counsel in the underlying litigation but have filed this complaint without the benefit of legal representation. It is evident that they do not

understand the relation between the Judicial Council and the court of appeals or the function of §352(b)(1)(A)(ii)—or for that matter the relation between restrictive covenants and trade secrets. The complaint was filed, with a state agency, on a form for complaining about state judges, and forwarded to the Judicial Council. The form states in bold type that it may be used only to complain about “active Illinois Supreme Court Justices, Appellate Court Justices, and Circuit Court Judges”. Complainants appear to believe that United States district judges and magistrate judges are members of the state judiciary. (The complaint refers to ethics rules that apply only to state judges and says that “[t]he example shown in this case definitely diminishes the overall credibility of the Cook County Court System, a System that is already under serious scrutiny.”) Complainants should consult with their lawyers, and work through counsel, before filing any additional documents under the Judicial Conduct and Disability Act of 1980.