

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

November 19, 2009

FRANK H. EASTERBROOK
Chief Judge

Nos. 07-09-90094 through -90128

IN RE COMPLAINT AGAINST THIRTY-FIVE JUDICIAL OFFICERS

MEMORANDUM

Complainant charges 35 judicial officers with misconduct. The complaint names all active and senior judges of the Seventh Circuit, all active and senior judges of the Eastern and Western Districts of Wisconsin, and all active and recalled bankruptcy judges and magistrate judges of those districts—plus one former magistrate judge who resigned many months ago. The complaint against the resigned judge (07-09-90118) is dismissed under 28 U.S.C. §352(b)(1)(A)(i) because the Judicial Conduct and Disability Act of 1980 applies only to current judicial officers

The gravamen of the complaint is that one district judge refuses to accept papers he tenders, or to rule on them, unless filing fees are paid (the judge has denied complainant's motions to proceed *in forma pauperis*, because he has filed at least three frivolous suits, see 28 U.S.C. §1915(g)), and that no other judge has done anything about this. Complainant also contends that the clerk of the court of appeals has refused to send him documents he wants to see (though the clerk is outside the scope of the Act). Complainant calls all of this "outrageous racism" and insists that all of the judges must have accepted bribes from the people complainant is trying to sue.

This is complainant's fourth charge under the 1980 Act during the last year. The other three (Nos. 07-08-90114, 07-09-90028 to -90042, and 07-09-90080), were dismissed on the basis of 28 U.S.C. §352(b)(1)(A)(ii), which provides that any complaint "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. Complainant cannot evade §352(b)(1)(A)(ii) by including the words "racism" and "bribery" in the complaint; these serious charges must be supported by evidence, and

complainant offers none. All he points to are the adverse decisions, which evince compliance with §1915(g) rather than any forbidden or nefarious motivation. This aspect of the complaint is dismissed under §352(b)(1)(A)(iii) for lack of allegations that could support the charge.

When dismissing complainant's former charges, I informed him about §352(b)(1)(A) and the limited scope of the 1980 Act. His current complaint ignores those rulings and does not make any effort to show how the allegations come within the 1980 Act. The fact that complainant has named judges who have had nothing to do with his litigation, or with the resolution of his earlier complaints, shows that the current complaint is an effort to harass rather than to obtain redress for a legitimate grievance. This is the second time complainant has named every judge of the court of appeals; he ignores my explanation, in dismissing the earlier complaint, why that is improper. The current complaint suggests that it is limited to "only" 35 judicial officers because he is still in the process of gathering additional names to be added to future complaints.

The federal judiciary need not tolerate repetitious abuse of the 1980 Act's processes. See Rule 10(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. I therefore direct complainant to show why the Judicial Council should not enter an order providing that future complaints will be accepted only if accompanied by a deposit of \$1,000, to be returned only if the Chief Judge determines that the complaint states a non-frivolous grievance.

A word is in order about why I have entered this order, given that I am one subject of this complaint. The reason is the same as in Nos. 07-09-90028 to -90042: The Rule of Necessity. If I am disqualified, then every judge of the circuit is disqualified, and no one would be authorized to screen the complaint.

Although it is possible to refer a complaint to another circuit, this is inappropriate when the complaint is insubstantial and names all judges only to harass. See *Report to the Chief Justice* at 116–17. Under these circumstances the Rule of Necessity allows the Chief Judge to make a preliminary ruling on the complaint. See the Commentary on Rule 25 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Rule 25(g) could be read to suggest that this step is appropriate only if the Judicial Council gives permission in advance. I do not think that a sound reading when, as here, a complainant names a majority of the Council, which itself would be unable to muster a quorum without invocation of the Rule of Necessity. But if complainant believes that I should not have participated in this proceeding, he may file a petition for review by the Council and ask it to assign someone else to the matter.