

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

January 9, 2008

FRANK H. EASTERBROOK
Chief Judge

Nos. 08-7-352-01, -02, -03 & -04

IN RE COMPLAINTS AGAINST TWO JUDICIAL OFFICERS

MEMORANDUM

Two plaintiffs in federal litigation have filed complaints against the judicial officers assigned to their suit: one complaint per judge per plaintiff. The same seven-page statement is attached to each complaint form. There is accordingly only one substantive grievance, and I have consolidated the four complaints for consideration and decision.

The gravamen of the complaints is that the lawyers who represented the plaintiffs (the complainants here) and the defendants collaborated to reduce the number of depositions taken—and thus, in complainants' view, to prevent the collection of evidence that they believe should be made available not only to the court but also to the general public. But the Judicial Conduct and Disability Act of 1980, under which the complaints have been filed, does not address the conduct of lawyers; it is limited to the conduct of federal judges. And with respect to the judicial role, the complaints have essentially nothing to say. One of the two judges (a magistrate judge) is not even mentioned, other than being named in the captions.

The district judge receives only a little more attention. The complaints assert that the judge "knows me [one of the two complainants] and my family personally, which has been explained in more detail to my attorneys. For example, when I was younger I was allowed to play on [the judge's] son's ... baseball team. Moreover, I attended the same high school as [the judge's son]. Additionally, my family and the [judge's family] attend the same church." To the extent that complainant may believe that casual acquaintance of this kind

disqualifies a judge, he is mistaken. Moreover, the 1980 Act does not apply to a judge's decision that he is eligible to sit in a given case.

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). "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). Complainants' apparent belief that the judge should have recused himself is within this rule. A judge's decision to continue presiding is "directly related to the merits of a ... procedural ruling" unless the judge knows that he is disqualified. See *id.* at 146. Similarly, complainants' assertion that the district judge should have granted summary judgment in their favor (rather than in defendants' favor) is covered by §352(b)(1)(A)(ii).

It may be that the district judge or magistrate judge granted a protective order that prevented the deposition of one or more persons, or that one (or both) of the judicial officers limited the questioning at a deposition. The complaints do not allege that either step occurred, but, if so, this too would be "directly related to the merits of a decision or procedural ruling". The remedy for any error in the handling of litigation is an appeal rather than a complaint under the 1980 Act.

The statement submitted in support of the complaints wraps up: "I am not surprised by [the district judge's] decision due to the fact that [one defendant in the suit] has a history of bribing government officials." Taking a bribe would be misconduct covered by the 1980 Act. But the statement offers not an iota of evidence that a bribe was offered or accepted (or even that the defendant *does* have a "history of bribing government officials"); this aspect of the complaints is dismissed under §352(b)(1)(A)(iii) because it lacks sufficient evidence to raise an inference that misconduct has occurred.

Both complainants filed appeals. One has been dismissed voluntarily; the other remains pending, but the court of appeals has ordered the appellant to show cause why the appeal should not be dismissed for want of prosecution. If complainant truly wants relief through the legal system, he should devote his energies to the appellate process.