

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

March 20, 2009

FRANK H. EASTERBROOK
Chief Judge

Nos. 07-09-90046 & -90047

IN RE COMPLAINT AGAINST TWO JUDICIAL OFFICERS

MEMORANDUM

Complainant, who has represented herself in two civil suits, contends that the judges assigned to these suits committed misconduct by not taking her poverty seriously.

This contention is difficult to understand. In each suit complainant asked for leave to proceed *in forma pauperis* (that is, as a pauper who need not prepay fees and costs). In each suit the judge granted her motion. Her claim of poverty not only was taken seriously but also was accepted and made the basis of a favorable decision.

Complainant asserts that the judge in her first case displayed indifference to her financial straits by asking in a “sleepy” way how long she had been out of work. Complainant does not assert that the judge fell asleep on the bench, and a judge’s “sleepy” tone of voice is not a basis for further inquiry under the Judicial Conduct and Disability Act of 1980. The complaint against this judge is dismissed under 28 U.S.C. §352(b)(1)(A)(i) because it does not allege misconduct.

Complainant asserts that the judge in her second case should not have dismissed her complaint. The docket sheet reflects that the judge notified complainant that her complaint was legally deficient and gave her 14 days to file a complaint stating a claim under federal law (or showing a claim under state law supported by diversity of citizenship plus the required amount in controversy). Complainant filed another complaint, which did not cure the deficiencies that the judge had identified. The judge then dismissed this amended complaint without prejudice and gave complainant 30 days to try a third time. She contends that it should not be necessary for her to file a further amendment to the complaint.

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 Judicial Council is an administrative rather than a judicial body. If complainant’s suit is finally dismissed, she will be able to argue in the court of appeals that her complaint was sufficient.

Some language of the complaint suggests that complainant thinks that, because she is out of work, she is entitled to prevail in the suits, and not just to proceed *in forma pauperis*. Complainant must understand that poverty has nothing to do with how district judges decide cases on the merits. This is what the judge in the second case meant by a remark that (as complainant remembers it) a judge does not do charity in court. People win or lose lawsuits based on the claims’ merit, not on the relative wealth of the litigants. Calling this judicial remark “rape” does nothing except lead me to think that none of complainant’s other statements can be taken literally. There is a vast difference between rape and a verbal reminder of a fact unwelcome to complainant. Hyperbole rarely advances a litigant’s cause.