

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

August 5, 2010

FRANK H. EASTERBROOK
Chief Judge

No. 07-10-90046

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant was the defendant in a civil suit recently resolved after a bench trial by a magistrate judge, to which the parties gave consent under 28 U.S.C. §636(c). Complainant was represented by counsel throughout those proceedings. He says that he paid his lawyers so much for handling the case in the district court that he was unable to afford an appeal, and he appears to see the Judicial Conduct and Disability Act of 1980 as a means to obtain review of the magistrate judge's decision.

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). 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 submits that the judge believed the wrong witnesses, misunderstood the facts, failed to detect perjury and spoliation of evidence, and made an incorrect decision. Complainant also contends that the subject judge should not have induced the parties to submit their dispute to an "early neutral evaluation," a procedure that complainant believes ran up his legal bill and deprived him of the wherewithal to appeal. But all of the contested acts by the subject judge either resolved the trial on the merits or represented procedural steps on the road to decision. All are covered by §352(b)(1)(A)(ii).

The way to obtain review of an adverse decision is by appeal, not by a proceeding under the 1980 Act. Complainant, who has a Ph.D., has taught at several universities, has published several books, and edits a scholarly journal, was well able to represent himself if he concluded that it was no longer worthwhile to pay counsel. The underlying dispute involves a falling-out of scholarly collaborators. I appreciate that complainant deems himself sorely aggrieved by his former colleague's behavior, but

having decided not to take an appeal he must stop nursing his grievance. The 1980 Act cannot be used to keep alive a dispute that has been resolved by final decision.

Complainant believes that the judge did not give enough attention to the results of the early neutral evaluation and did not adequately prepare for the trial. The first of these submissions does not allege misconduct of any kind (a neutral evaluation is designed to promote settlement, enabling the parties to hold down legal expenses, rather than to control the conduct of the litigation), and the second is within §352(b)(1)(A)(ii). How much time to devote to learning the record before trial—as opposed to studying the exhibits and transcripts during and after trial, before making a decision—concerns the allocation of judicial time and is a procedural decision.