

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

October 1, 2010

FRANK H. EASTERBROOK
Chief Judge

No. 07-10-90060

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Many years ago complainant was a party to civil litigation in a federal district court within another circuit. The district judge concluded that complainant had taken frivolous positions and directed her to dismiss related (and, in the judge's view, equally frivolous suits). Complainant did not comply, nor did complainant appear at a scheduled hearing. Instead complainant asked a district judge in yet another circuit to set aside the district judge's order under Fed. R. Civ. P. 60(b)(3). This defiance, coupled with complainant's failure to appear as directed, led the judge to hold complainant in contempt of court and issue a bench warrant for her arrest.

Complainant resides within this circuit. When the Marshal Service executed the warrant, complainant was brought before a magistrate judge for a preliminary hearing to determine whether complainant would be transferred to the original district for further proceedings—and, if necessary, maintained in the Marshal Service's custody. Complainant contended that the warrant was invalid and insisted that she had done nothing wrong, that the district judge should not have entered the orders he did, and that the judge lacked authority to issue any process that would be served more than 100 miles from the courthouse. The magistrate judge explained to complainant that the last of these assertions is wrong (an arrest warrant is not subject to the rules for subpoenas) and that the other arguments are properly addressed to the district judge, and the court of appeals with authority to review that judge's decisions. At the conclusion of this hearing, complainant promised to appear in the original district judge's courtroom the next week. The magistrate judge accepted this promise and released complainant on her own recognizance.

Two years ago complainant filed a charge of misconduct against a different magistrate judge who had played a tangential role in these proceedings. I dismissed that complaint (No. 07-08-90051) under 28 U.S.C. §352(b)(1)(A)(i) and (ii) because it concerned judicial decisions and at all events did not allege misconduct. Now

complainant asserts that the magistrate judge who conducted the hearing, and decided *not* to incarcerate complainant pending transfer, committed misconduct. Complainant ignores §352(b)(1)(A), despite the fact that my earlier decision informed her of it. To the extent that complainant disputes the magistrate judge's legal conclusions—such as his determination that the validity of the warrant, and the propriety of the proceedings that led to its issuance—must be tested in the issuing court (and the appropriate court of appeals), this complaint too is dismissed under §352(b)(1)(A)(ii).

According to complainant, the magistrate judge committed misconduct by “treating litigants in a demonstrably egregious and hostile manner.” Such acts are outside the scope of §352(b)(1)(A)(ii). But such a charge must be supported by proof, and complainant offers none. I have read the complete transcript of the proceeding in question. The magistrate judge was civil, permitted complainant to speak at length, and provided complainant with helpful (and legally correct) advice. The magistrate judge sought and found a way to avoid remanding complainant to custody. Nothing remotely “hostile” or “egregious” occurred at this hearing. This aspect of the complaint is dismissed because it is conclusively refuted by objective evidence.