

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

April 25, 2012

FRANK H. EASTERBROOK
Chief Judge

No. 07-12-90023

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant is the plaintiff in a civil suit. He contends that the district judge committed misconduct by accepting *ex parte filings* and being unduly influenced by one defendant's lawyer.

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). Most allegations of this complaint fit that description. Complainant believes that the judge should not have accepted the arguments made by counsel for one of the defendants. Being influenced by a lawyer is not misconduct (lawyers are *supposed* to influence judges by making persuasive arguments); and to the extent that complainant believes that the judge erred by reaching a conclusion favorable to defendants and dismissing the complaints, §352(b)(1)(A)(ii) applies directly. The right forum for an argument that the judge erred is the court of appeals, not the judicial council.

Receiving *ex parte* submissions is outside the scope of §352(b)(1)(A)(ii). But complainant has not identified any *ex parte* submission. All of defendants' papers were filed with the clerk of court and served on complainant. He characterizes as "*ex parte*" two kinds of document: courtesy copies of motions, and notices of motions. Courtesy

copies of motions, furnished directly to the judge (who therefore does not have to wait for the clerk's office to forward a copy), are not *ex parte* unless they differ from the document filed with the clerk. Complainant does not contend that there is any difference between the filed-and-served documents and the courtesy copies. (Complainant sent some documents directly to the judge without filing them with the clerk. That was a real attempt at an *ex parte* submission. Defense counsel did not bypass the clerk's office as complainant tried to do.) And notices of motions are required by the district court's legal rules; they specify a date when a motion will be made but do not themselves seek any legal relief. They are also served on opposing parties. A submission is *ex parte* when it is made in private, without the other side's knowledge. None of the events to which complainant takes exception occurred *ex parte*.

Complainant expresses grievances about several lawyers and state judges. The 1980 Act applies only to federal judicial officers. I have therefore not considered complainant's dissatisfaction with the conduct of these other persons.