

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

June 15, 2012

FRANK H. EASTERBROOK  
Chief Judge

No. 07-12-90033

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant was the plaintiff in a civil suit filed in 2001 and decided adversely to him that same year. He contends that the judge erred in dismissing the suit and also alleges that the judge engaged in *ex parte* contacts.

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, to the extent that complainant contests the outcome of the litigation.

The assertion that the judge “called me ‘ex parte’ in ~Aug. 2001” is not covered by §352(b)(1)(A)(ii), but neither does it state any misconduct. The problem is not simply that the complaint lacks details, which are essential under the 1980 Act. The deeper problem is that *ex parte* contacts are objectionable because they disable one side from meeting the other’s arguments. But a call *to complainant* did not deprive him of knowledge about the case or his opponent’s arguments. I gather that complainant understood the judge to suggest that he cite two particular statutes in response to defendants’ motion to dismiss. The docket sheet implies that the judge was having a hard time getting complainant to file a response to the motion; most of the filings noted

in the docket for August 2001 were extraneous to the pending motion. Extending a helping hand to a *pro se* litigant does not entitle that very litigant to cry “misconduct!”

Many statements in this complaint are hard to follow, and some imply that complainant is fantasizing—perhaps about the supposed *ex parte* call, if not about other things. The complaint’s assertion that his loss in the 2001 suit caused a former Governor’s impeachment (and later criminal conviction) is unsupported by reasoning and impossible to credit. Complainant also asserts that after the call from the judge, “my cognitive dissonance faxed him many 78.9% federal funding charges right away.” This is gibberish, as is much else in the complaint. Section 352(b)(1)(A)(iii) requires the chief judge to dismiss a complaint that is “frivolous, lacking sufficient evidence to raise an inference that misconduct has occurred, or containing allegations which are incapable of being established through investigation”. That is an apt description of this complaint’s allegations.