

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

July 15, 2009

FRANK H. EASTERBROOK
Chief Judge

No. 07-09-90076

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant has presented a claim in a pending bankruptcy proceeding. He accuses the bankruptcy judge of misconduct for two reasons: first, although complainant sought to have his claim resolved by the district's chief bankruptcy judge, it was handled by the judge assigned to the bankruptcy proceeding; second, that judge made a decision on the papers rather than waiting for oral argument. Complainant believes that the judge thus violated Fed. R. Bankr. P. 9003 and one of the court's local rules.

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).

Complainant's remedy for any error is by appeal rather than a proceeding under the 1980 Act. But complainant should understand that the bankruptcy judge's actions were entirely appropriate. No litigant is entitled to choose a judge. Motions are properly handled by the judge assigned to the case. And judges are entitled to resolve matters after receiving written submissions. Complainant calls the subject judge's decision "*ex parte*" but does not understand that phrase, which means a decision after listening to one side in private. A decision based on written, public filings is not *ex parte*. Trial and appellate courts act on written filings all the time. Complainant has chosen to proceed without benefit of counsel. That is his right, but before crying "misconduct!" a litigant should endeavor to understand how courts operate.