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

January 2, 2008

FRANK H. EASTERBROOK
Chief Judge

No. 07-7-352-55

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

An attorney whose practice covers both debt renegotiation and bankruptcy has filed a single complaint against two bankruptcy judges. When the first judge (not the subject of this memorandum) recused himself, all matters in the district that had been filed by this attorney were reassigned to the second judge.

The complaint asserts that the second judge "colluded" with the first to take steps that injured the attorney. One step was to schedule hearings in an inconvenient courthouse, where the second judge sits. Another was to suspend the attorney from practice in the bankruptcy court. A third was to fail to recuse himself. A fourth was to hold complainant in contempt of court for failing to disgorge sums that the judge found had been collected inappropriately from clients. The final step, coincident with numbers two through four, was to include in opinions statements that are critical of the complaining attorney—natural enough, one should think, because no one gets suspended or held in contempt of court unless he has done things that deserve criticism. But the complaining attorney asserts that the judge's statements are false, and that by spreading falsehoods the judge has violated the ABA's Model Code of Judicial Conduct.

The ABA's Model Code does not apply to the federal judiciary, which is governed by the Code of Conduct for United States Judges. The Code of Conduct contains many aspirational provisions that are not appropriate bases of action under the Judicial Conduct and Disability Act of 1980. Provisions of

the Code set high standards for how a judge should handle pending litigation, but the 1980 Act provides that any complaint "directly related to the merits of a decision or procedural ruling" must be dismissed. 28 U.S.C. §352(b)(1)(A)(ii). That provision is essential to judicial independence. See Standard 2 for Assessing Compliance with the Act, *Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice* 144–47 (2006).

Complainant, aware of this limitation, recognizes that it prevents any challenge to the judge's suspension order, contempt finding, and decision not to recuse himself. Complainant believes, however, that the Judicial Counsel may review, under the 1980 Act, his contention that statements in the judge's orders (and similar statements made in open court) are false. That is not so. Statements explaining judicial orders, no less than the orders themselves, are "directly related to the merits" of the decisions. In principle, statements evincing racial bias or other inappropriate grounds of decision could be the basis of a complaint under the 1980 Act, but the statements that complainant challenges—such as whether complainant is dishonest or has committed legal malpractice—concern the merits of the actions taken; they are not extraneous to the merits. Likewise the second judge's decision not to postpone the hearing on complainant's suspension (complainant asserts that he "was totally disabled" and unable to attend; the judge disbelieved this assertion) is directly related to a procedural decision (the decision to proceed with the hearing) and is outside the scope of the 1980 Act. The Judicial Council is an administrative body; the merits of the judicial decisions, and the procedures used to reach them, are open to review by the district court and the court of appeals, but not the Judicial Council of the Seventh Circuit.

This leaves the assertion that the second judge has "colluded" with the first. Once the first judge recused himself, complainant believes, no other judge may consult with him on a subject related to the complaining attorney's practice. That is not necessarily so; a recused judge may be a witness in suspension or disbarment proceedings. Recusal ends an adjudicative role but does not mean that the recused judge's knowledge must be withheld from ongoing proceedings. Often recusal is required precisely because a judge may have personal knowledge of adjudicatory facts relevant to pending litigation.

What is more, the complaint does not describe what the "collusion" entails. The first judge made several statements in open court, and in a complaint sent to the Attorney Registration and Disciplinary Commission of Illinois, that the second judge considered. Use of publicly available materials differs from "collusion." Complainant also believes that the two bankruptcy judges are jointly "delaying my appeal hearing" before a district judge, but of this he offers no explanation. A complaint that omits sufficient evidence to raise an inference that misconduct has occurred must be dismissed. 28 U.S.C. §352(b)(1)(A)(iii).

One final aspect of the complaint calls for some attention. Complainant asserts that the second judge "has even made not so veiled threats to the U.S. Trustee's office indicating that if they don't look into prosecuting me they might be held in violation of bankruptcy rules." Complainant has attached the

transcripts of several hearings. I have read these, and they do not support this accusation. The judge does not threaten the Trustee, directly or by implication. The United States Trustee does not "prosecute" anyone, and a Trustee's failure to "prosecute" a debtor's attorney could not possibly violate any of the Federal Rules of Bankruptcy Procedure. This allegation, too, is dismissed under §352(b)(1)(A)(iii).