

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

May 30, 2007

FRANK H. EASTERBROOK
Chief Judge

No. 07-7-352-20

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant is among those who refuse to accept adverse outcomes in litigation and insist that they are entitled to litigate over and over—apparently believing that their adversaries (unlike themselves) must yield if one case eventually should go against them. See, e.g., *Homola v. McNamara*, 59 F.3d 647 (7th Cir. 1995). That sanctionable strategy does not become acceptable when transferred from the courtroom to a complaint under the Judicial Conduct and Disability Act of 1980.

Complainant lost in trust litigation under state law. His next step was to sue the state judge in federal court. That suit was dismissed (the state judge has immunity), and when complainant appealed he refused to pay the filing and docket fees. Thus his appeal likewise was dismissed. Other federal suits have been equally unavailing. Apparently there was additional litigation in state court; it need not be recounted.

Next complainant sued the federal judge who decided his second suit, plus two state judges (including the judge who already had prevailed on immunity grounds). That suit was dismissed as barred by judicial immunity, and complainant filed another appeal—which is well on its way to dismissal, because complainant has again failed to pay the filing and docket fees. In the course of this latest proceeding, the district court entered an order restricting complainant's ability to initiate further federal suits without prior approval.

The complaint under the 1980 Act asserts, without elaboration, that the district judge who presided in these most recent proceedings has committed judicial misconduct by “ignoring material facts” and being “not current on trust and contract law”, among many other assertions. The complaint is full of buzzwords and catchphrases (“failure to act in good faith”) but devoid of any factual detail that might tend to substantiate the accusations. Some of the phrases, such as “violation of Speedy Trial Act of 1974”, demonstrate that complainant has simply dumped a bunch of legal words into the document without any idea what bearing they may have; the Speedy Trial Act applies only to federal criminal prosecutions.

The 1980 Act does not permit a collateral attack on judicial rulings. 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 maintains that the judge is biased against him and should have recused himself, but (a) the only “evidence” of bias is the adverse rulings, which do not require recusal, see *Liteky v. United States*, 510 U.S. 540 (1994), and (b) a decision to deny a motion for recusal is itself “an official action of [the] judge” covered by the norm that the 1980 Act may not be used to obtain review of a judge’s rulings in litigation. Standard 2, *supra*, at 146.

This is the eleventh complaint under the 1980 Act that complainant has filed since 2004. The pattern is the same: No sooner has a judge (or a panel of the court of appeals) decided a case against complainant than an allegation of misconduct is made against each judge who rendered or participated in the adverse decision. All 11 complaints are similar in their structure and the nature of their allegations.

Repetitious, frivolous complaints are not tolerable. They divert judicial time from litigants who have a better claim to that scarce resource. Persons who abuse the procedures of the 1980 Act may be restricted from filing additional complaints. See Rule 1(f) of the Rules of the Judicial Council of the Seventh Circuit Governing Complaints of Judicial Misconduct or Disability. I therefore order complainant to show cause within 14 days why the Council should not enter an order providing that his future complaints will not be received for filing unless accompanied by a deposit of \$1,000, which will be returned if and only if the Chief Judge determines that the complaint is non-frivolous.