

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

July 26, 2007

FRANK H. EASTERBROOK
Chief Judge

No. 07-7-352-30

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant filed in state court a civil action against a United States Attorney and two attorneys who work at the Tax Division of the Department of Justice. The suit was removed to federal court under 28 U.S.C. §1442(a) and promptly dismissed by the district judge in an order reading in full: “After a careful review of this recently removed state court complaint, said complaint is dismissed for failure to properly state a proper cause of action. Plaintiff is requested to consult with an attorney prior to filing any further pleadings.” Complainant filed both a notice of appeal and a complaint under the Judicial Conduct and Disability Act of 1980.

It is easy to understand the source of complainant’s frustration. Violating Circuit Rule 50, the district judge did not say why the complaint is deficient. Neither the *pro se* plaintiff (who has every right to proceed without counsel, if he chooses) nor the court of appeals could tell what shortcoming the district judge found in the complaint. Complainant suspects that the real reason for the dismissal is untoward. The district judge once served as an Assistant United States Attorney, and complainant thinks that he is protecting the current crop of lawyers who represent the United States.

Suspicious differ from evidence, however, and of this the complainant offers none. What the complaint under the 1980 Act omits is any reason to believe that the district judge has committed *misconduct*, as opposed to making a legal error—whether a substantive error, or just the procedural error of failing to give an explanation. 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). “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). That description fits this situation.

Complainant’s proper forum is the court of appeals. That court has issued an order under Circuit Rule 50 directing the district judge to explain his decision. Once that explanation has been furnished, complainant will be able to present any legal objections to the district judge’s analysis and judgment.