

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

October 22, 2007

FRANK H. EASTERBROOK
Chief Judge

No. 07-7-352-39

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant asserts that a judge arbitrarily ordered his arrest and the search of his hotel room because the judge suspected him of being a threat to judicial security. He asserts that he has never threatened anyone but that friendly overtures have been misunderstood, and he wants the Judicial Council to reprimand the judge and order the judge never to speak to complainant.

Complainant filed a suit making similar charges, and seeking similar relief, but the suit was dismissed when he failed to pay the filing fee. A complaint under the Judicial Conduct and Disability Act of 1980 is not a means to obtain review of that adverse decision.

The complaint is not affected by 28 U.S.C. §352(b)(1)(A)(ii), which excludes from the 1980 Act any matter "directly related to the merits of a decision or procedural ruling"; the complained-of judge was the defendant rather than the adjudicator in complainant's suit. And an arrest is not part of the judicial function. Nonetheless, this complaint must be dismissed under 28 U.S.C. §352(b)(1)(A)(i) to the extent it contests the security detail accompanying the judge, and the judge's decision to refer to the Marshal Service letters written by complainant. It is not judicial misconduct to inform law-enforcement personnel about correspondence that could be construed (or, as complainant would have it, misconstrued) as threatening. Federal judges (and the families of judges) have been assassinated by disgruntled litigants, and investigating the authors of questionable correspondence is one appropriate task of the Marshal Service.

As for complainant's assertion that the judge ordered a deputy marshal to arrest him and search his hotel room without a warrant or probable cause: such a judicial directive would be within the scope of the 1980 Act. But the chief judge may dismiss claims that are "lacking sufficient evidence to raise an inference that misconduct has occurred". 28 U.S.C. §352(b)(1)(A)(iii). Complainant has not provided any factual detail or corroborating information. He does not assert that he heard the judge direct a deputy marshal to arrest him. He does not suggest that any other person heard the judge make such an order. Complainant asserts that he was arrested, and his room searched, by a deputy marshal, and I must accept that allegation. See §352(a) ("The chief judge shall not undertake to make findings of fact about any matter that is reasonably in dispute."). I need not accept complainant's unsupported belief that a particular judge ordered a deputy marshal to do these things.

After I received this complaint, I asked the judge in question for a response. The judge replied that the Marshal Service investigated complainant on its own initiative after discovering that he not only had written multiple letters to the judge but also had approached the judge near a door of the courthouse when the judge was accompanied by a security detail. Nothing happened at the time of the meeting; the Marshal Service did not learn until later that the letter-writer and the man who approached the judge were the same person. The judge continues: "I have never spoken to anyone outside chambers and the USMS about [complainant]. I did not ever enter an order that he be arrested or even request that he be arrested. I have had no personal contact of any sort with [complainant] other than the lunch time encounter I described." Nothing in the complaint calls these representations into question. I have a complete description of the judge's role on one side and unsupported speculation on the other. This is the sort of complaint that is properly dismissed under §352(b)(1)(A)(iii) after a limited inquiry of the accused judge. Standard 4 for Assessing Compliance with the Act, *Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice* 148 (2006).