

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

November 25, 2008

FRANK H. EASTERBROOK
Chief Judge

No. 07-08-90108

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant is the plaintiff in civil litigation. One of the defendants is a federal agency, which removed the suit from state to federal court. The district judge dismissed the suit to the extent that it concerns the federal agency and remanded to state court all claims against the remaining parties. Complainant believes that this decision demonstrates “reprehensible and dishonorable” conduct that should lead to discipline.

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 is entitled to present his arguments to the court of appeals. The Judicial Council is an administrative body and does not review contentions that judges made incorrect rulings.

Complainant insists that, by acting before his response to the agency’s motion was due, the judge demonstrated unfitness for office. This is nothing more than an argument that the judge erred in a particular case. There is no ethical bar to prompt action if the right disposition is clear. Whether a given decision was made prematurely is a question for the court of appeals rather than the Council.

Complainant asserts that the judge must have relied on *ex parte* communications from the agency’s lawyer, in addition to the agency’s motion to dismiss. But the complaint offers not a shred of evidence for this charge. (Delay in receiving notice of the court’s decision—which was mailed to complainant 17 days after the date on the judge’s order—is unrelated to *ex parte* contacts that precede the decision. The clerk’s office, not the judge, is responsible for notice.) That a party has lost does not imply that skullduggery has occurred; at least one party loses in every lawsuit.