

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

December 2, 2008

FRANK H. EASTERBROOK
Chief Judge

No. 07-08-90112

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant is an investor in a corporation that is a debtor in bankruptcy. He contends that the bankruptcy court failed to notify the debtor “that a previous hearing ... was deemed to constitute an evidentiary hearing after the fact.”

The Judicial Conduct and Disability Act of 1980 applies to judges but not judicial personnel. Employees of the clerk’s office, not judges, are responsible for notifying the parties about judicial decisions. It is always regrettable when timely notice is not sent, but errors and omissions by the clerk’s office are outside the scope of the 1980 Act.

To the extent that the complainant believes that the judge should not have treated the proceeding as an evidentiary hearing, this subject is covered by the provision requiring the chief judge to dismiss any complaint that is “directly related to the merits of a decision or procedural ruling”. 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). A contention that a particular hearing should not have been used to receive evidence, and that the judge therefore erred in making findings of fact or conclusions of law, is within the scope of §352(b)(1)(A)(ii). Any claim of error may be presented to the district court (and, after entry of a final decision, the court of appeals). The Judicial Council, an administrative rather than a judicial body, does not serve an error-correction function.

The complaint concludes by accusing the judge of bias. But the only evidence of bias is the adverse decision. Half of all litigants lose their cases; that this occurs—indeed, is a goal of the judicial system—does not support an inference of bias. This aspect of the complaint is dismissed under §352(b)(1)(A)(iii) because it is not supported by evidence.