

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

January 8, 2009

FRANK H. EASTERBROOK
Chief Judge

Nos. 07-09-90001 to 90017

IN RE COMPLAINT AGAINST SEVENTEEN JUDICIAL OFFICERS

MEMORANDUM

Complainants have lodged a blunderbuss charge against every active and senior judge of the Seventh Circuit, plus a district judge who was nominated to that court last year. The complaint charges the 17 judges with violating every provision of the Constitution's first fourteen amendments—and, to drive the point home, the complaint proceeds to list them, from the Establishment Clause of the First Amendment through the Privileges and Immunities Clause of the Fourteenth, adding that all of the judges "have instituted slavery and involuntary servitude". The complaint also charges all 17 judges with violating every provision of 28 U.S.C. §455, which deals with disqualification. In other words, complainants assert that every one of the 17 judges sits in cases where his or her close relatives are litigants or lawyers, where he or she owns stock in the litigants, and so on. Next the complaint accuses all 17 judges of committing treason by giving aid and comfort to the enemies of the United States. Finally, the complaint asserts that all 17 judges are biased against complainants personally.

Because I am one of the judges named in the complaint, the first question is whether I am disqualified. If I am disqualified, then every judge of the circuit is disqualified, and no one would be authorized to screen the complaint. Although it is possible to refer a complaint to another circuit, this is inappropriate when the complaint is insubstantial and all judges have been named only as a harassing device. See *Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice* 116–17 (2006). Under these circumstances the Rule of Necessity allows the Chief Judge to make a preliminary ruling on the complaint. See the Commentary on Rule 25 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Rule 25(g) could be read to suggest that this step is appropriate only if the Judicial Council gives permission in advance. I do not think that a sound reading when, as here, a complaint names a majority of the Council, which itself would be unable to muster a quorum without invocation of the Rule of Necessity. But if complainants believe that I

should not have participated in this proceeding, they may file a petition for review by the Council and ask it to assign someone else to the matter.

Because the complaint names all active and senior judges of the circuit, and one nominee, confidentiality is impossible, and I use names in this memorandum.

The complaint (No. 07-09-90003) against Circuit Judge Harlington Wood Jr. must be dismissed under 28 U.S.C. §352(b)(1)(A)(i) as outside the scope of the Judicial Conduct and Disability Act of 1980. Judge Harlington Wood Jr. died on December 29, 2008, and is no longer a judicial officer covered by the statute.

The charges against the remaining judges are dismissed as frivolous and unsupported by evidence. 28 U.S.C. §352(b)(1)(A)(iii). Complainants list many constitutional and statutory rules, but they do not include even one fact about even a single judge—and the omission of facts from the complaint means that there is not the smallest reason to believe that any of the judges has committed misconduct. Treason is a serious charge, but like complainants' other charges (including conflict of interest and the imposition of excessive bail) it needs substantiation. The complaint does not supply a reason to think that any of the judges is in league with Osama bin Laden or any other enemy of the United States, or has engaged in misconduct of any other stripe.

The complaint (No. 07-09-90017) against District Judge Simon (the nominee to the Seventh Circuit) is the most mysterious. I cannot find any indication that any of these complainants' lawsuits has come before Judge Simon.

By contrast, most (if not all) of the circuit judges have participated in at least one of the many appeals that complainants have filed and lost over the years. To the extent that the complaint can be understood as a challenge to any of those decisions, it is dismissed under 28 U.S.C. §352(b)(1)(A)(ii), which provides that any contest to the substance of a judicial decision is outside the 1980 Act's scope. (For this purpose, my decision of last week dismissing one complainant's earlier charge under the 1980 Act (No. 07-08-90115) is treated as official judicial action. See the Commentary on Rule 3(h) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.)

Last week, after one of the complainants charged a district judge with misconduct but omitted any factual allegations, I informed him about the need for particulars and added:

Complainant frequently makes baseless charges of misconduct. Earlier this year the court of appeals entered an order providing that complainant has forfeited the privilege of proceeding *in forma pauperis* and directing the clerks of all courts within the circuit to return, unfiled, any papers that complainant tenders until all accumulated filing fees and sanctions have been paid. ...

The fact that complainant is under a filing bar leads me to be concerned that complainant will move the forum for his frivolous charges from the [district] court to the Judicial Council. I therefore warn complainant that further unsubstantiated complaints will lead me to ask the Council to enter an order restricting his access to this grievance machinery. See Rule 10(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

The current complaint must have been prepared immediately after receipt of my decision. It was obviously prepared by the complainant in No. 07-08-90115; the style and typography are identical. (The current complaint is signed not only by complainant

in No. 07-08-90115 but also by a person who, according to the complaint, is “his sister and ward”.) This complaint is as unsubstantiated as the previous one and has no apparent purpose other than to disqualify the judges who might enter an order curtailing abuse of the 1980 Act—and, as I have explained, it does not achieve that goal. The current complaint shows that the concern I expressed last week is a substantial one.

Therefore, in addition to dismissing this complaint, I direct complainants to show cause why the Judicial Council should not enter an order under Rule 10(a) that will prevent misuse of the 1980 Act’s procedures. The Council’s order in proceeding No. 07-7-352-20 provides that future complaints from a person who had abused the 1980 Act would not be received for filing unless accompanied by a deposit of \$1,000, which would be returned if and only if the Chief Judge determines that the complaint is non-frivolous. Complainants have 14 days to address the question whether the Council should enter a similar order concerning them. The Clerk will furnish complainants with a copy of the Council’s order in No. 07-7-352-20.