

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

May 13, 2009

FRANK H. EASTERBROOK  
Chief Judge

No. 07-09-90062

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

In 2007 I dismissed three proceedings (Nos. 07-7-352-30, 07-7-352-45, and 07-7-352-54) that complainant had initiated under the Judicial Conduct and Disability Act of 1980. In each of these orders I informed complainant about 28 U.S.C. §352(b)(1)(A)(ii), which provides that “[a]ny allegation that calls into question the correctness of an official action of a judge ... is merits related.” See also 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). I informed complainant that any further charge under the Act must explain why it is consistent with §352(b)(1)(A)(ii) and added that additional frivolous invocations of the 1980 Act would lead me to ask the Judicial Council to take steps to curtail complainant’s frivolous filings.

The current complaint is as frivolous as its predecessors, and like them it does not mention §352(b)(1)(A)(ii) or make the slightest effort to show how it comes within the scope of the Act. Instead complainant insists that some Assistant United States Attorneys are violating state rules of ethics, and that the district judge has violated Canon 3(B) of the Code of Conduct for United States Judges by not reporting these supposed violations. Yet federal rather than state rules apply in federal court. AUSAs need not belong to any particular state bar (or, indeed, any state bar at all); it is enough to belong to the bar of the federal court before which the AUSA practices or be admitted to practice *pro hac vice*. And, to repeat what I have told complainant before, when a district judge makes a ruling on a subject (as the judge has rejected complainant’s contentions), the remedy is by appeal from a final decision and not a complaint under the 1980 Act. The subject judge does not see any unethical conduct, and Canon 3(B)(5) requires a judge to “take appropriate action” only after “learning of reliable evidence indicating the likelihood that ... a lawyer violated applicable rules of professional conduct.” (Complainant relies on a version of the Code no longer in effect. The language that I have quoted is in the current version.)

The current complaint is dismissed, and I direct complainant to show cause, within 14 days, why the Judicial Council should not enter an order curtailing his repeated, frivolous use of the 1980 Act's mechanisms by requiring future complaints to be accompanied by a deposit of \$1,000, which will be refunded only if the Chief Judge determines that the complaint is not frivolous. See Rule 10(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.