

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

August 25, 2009

No. 07-09-90075

IN RE COMPLAINT AGAINST

[REDACTED]  
[REDACTED]  
Complainant

ORDER

The Chief Judge gave complainant 14 days to show cause why the Judicial Council should not enter an order curtailing his abuse of the Judicial Conduct and Disability Act of 1980. See Rule 10(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. Complainant filed a document that, although designed principally as a request for review by the Council of the Chief Judge's order dismissing the complaint, also briefly addresses the order to show cause.

Within the last eight months complainant has filed three complaints under the 1980 Act. All have been dismissed under 28 U.S.C. §352(b)(1)(A)(ii) (any complaint "directly related to the merits of a decision or procedural ruling" must be dismissed), because all concerned the correctness of judicial action. When dismissing each of these complaints, the Chief Judge informed complainant about §352(b)(1)(A)(ii), quoted its language, and observed that "[a]ny 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). Yet complainant has continued to ignore both the statute and the *Report's* definition of "merits related".

Complainant's request for review by the Council essentially asserts a right to go on filing complaints no matter how §352(b)(1)(A)(ii) and the *Report* define the scope of the 1980 Act. In complainant's view, any time a judge decides incorrectly (as complainant sees things) the judge has violated the Constitution and should be penalized under the 1980 Act. This response makes it clear that frivolous filings will continue unless curtailed by a formal order of the Council.

Abating frivolous complaints under the 1980 Act, while leaving room for serious ones, is a difficult task because the Council is not a judicial forum. Standard grants of sanctioning power, such as Fed. R. Civ. P. 11 and 37, and Fed. R. App. 38, are not available. Requiring people to submit future complaints for screening would not do much to conserve judicial resources; the screening process (and the inevitable appeal to the Council) could take as much time as the normal decisional process under the 1980 Act.

The Council concluded in 2007 that the only approach holding much prospect is the creation of a financial hurdle. Unlike new suits in a district court, complaints under the 1980 Act may be filed without fee, but the statute does not preclude the use of a financial gateway as a sanction for demonstrated misconduct. Financial incentives can help curtail frivolous complaints under the 1980 Act. Requiring a deposit of \$1,000 by a complainant who has abused the 1980 Act's processes serves as an appropriate screen. See No. 07-7-352-20 (issued July 9, 2007). That approach is equally apt here.

To ensure that every non-frivolous complaint can be heard and resolved on the merits without expense to the complaining party, this deposit will be refunded if the Chief Judge determines that a complaint has any arguable merit. If, however, a future complaint follows the model of those already considered and rejected, then the deposit will not be refunded. Any complaint tendered by this complainant without the required deposit will be returned unfiled.

It is so ordered.