

THE JUDICIAL COUNCIL OF THE SEVENTH CIRCUIT

219 South Dearborn Street
Chicago, Illinois 60604

October 22, 2010

No. 07-10-90052

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 complainant's 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 has not filed a response. The matter therefore is ready for decision.

Recently [REDACTED] has filed two complaints under the 1980 Act. Both were dismissed as barred by 28 U.S.C. §352(b)(1)(A)(ii), which provides that any complaint that is "directly related to the merits of a decision or procedural ruling" must be dismissed, or other parts of §352(b)(1)(A). Both complaints concern [REDACTED] effort to upset decisions rendered years ago. After the Chief Judge dismissed the first complaint (No. 07-10-90028), [REDACTED] filed another concerning a decision that a bankruptcy judge made more than 25 years ago. The second complaint did not mention §352(b)(1)(A)(ii). That, plus the fact that [REDACTED] is the subject of a bar order under *Support Systems International, Inc. v. Mack*, 45 F.3d 185 (7th Cir. 1995), because of his penchant for frivolous litigation and failure to pay the ensuing sanctions, led the Chief Judge to express concern that [REDACTED] has decided to move his campaign to the procedures established by the 1980 Act. [REDACTED] failure to respond to the Chief Judge's order implies that he is unwilling to forswear improper use of the 1980 Act's procedures.

Curtailing frivolous complaints 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 complainant 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 only approach that holds 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.

In 2007 the Council decided that requiring a deposit of \$1,000 by a complainant who has repeatedly abused the 1980 Act's processes would serve as an appropriate screen. See No. 07-7-352-20 (issued July 9, 2007). That approach is equally apt here.

The \$1,000 is neither a fine nor a filing fee. It is a deposit, designed to make complainant think seriously before filing—though it still falls short of the costs that the federal judiciary incurs in using 21 judges to resolve a complaint. 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, [REDACTED] files a future complaint after the model of those already considered and rejected, then the deposit will not be refunded. Any complaint that he tenders without the required deposit will be returned unfiled.

It is so ordered.