

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

October 4, 2010

FRANK H. EASTERBROOK
Chief Judge

No. 07-10-90055

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant has filed suits in Indiana (both state and federal court) and Louisiana (federal court, and perhaps state court too), seeking relief for losses he attributes to an automobile accident in 2002. Neither adverse judicial decisions nor the expiration of the statute of limitations have dissuaded complainant from filing more suits, against several different defendants. His most recent suit, in a federal district court, was dismissed last year. An appeal was dismissed when complainant failed to pay required fees. After the district judge denied a motion under Fed. R. Civ. P. 60(b), complainant accused the district judge of misconduct.

Any complaint that is “directly related to the merits of a decision or procedural ruling” must be dismissed. 28 U.S.C. §352(b)(1)(A)(ii). See also Rule 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. “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). The allegations of this complaint fit that description, to the extent that complainant contends that the judge erred in handling his latest suit.

The complaint is hard to understand, but read generously it makes two allegations that are outside the scope of §352(b)(1)(A)(ii). One of these allegations is that someone in the Clerk’s Office frustrated complainant’s efforts to prosecute his suit by demanding \$80,000 rather than the authorized filing fee. The 1980 Act applies only to judicial employees, so this allegation is dismissed under §352(b)(1)(A)(i) as outside the scope of the Act. It is also exceedingly unlikely. The suit was filed and resolved; adjudication was not thwarted by the Clerk’s Office. Complainant may have misunderstood what was said to him, but the misunderstanding does not appear to have had an adverse effect.

The other allegation is that in 2002, while serving on a state court, the subject judge accepted a bribe from counsel for a defendant and, having taken the payoff, "Canceled My Case without Plaintiff agreement." This is a serious charge, but complainant's assertion is not backed up by evidence. Here is the allegation:

[The subject judge] Received an "Envelop" from Defendant [name omitted in light of 28 U.S.C. §360(a)] Attorney [name omitted] Inside is "Money Stock" is Real "Bribe" ... [The subject judge] Grabbed an Envelop in His Left Hand, Right Hand to Show Inside Envelop "Money Stock" and Sender name= [defendant's and lawyer's names omitted]. [The subject judge then] Used His Experienced Net Works and Money Power to Confederacy Involve US Senate & Congress to Got Appointment also Brake Line of Appointee Formal Existing Judges All Comes 1 Reason that This Action was Afraid Disclose "Bribe" to Broke almost all Fair Judge Community and Net Works with also United States Congress and Senates Fair Office Duty[.]

Complainant says that he, and two state judges, saw the subject judge accept the bribe.

I asked the subject judge for a response. He denied having received a bribe then, or at any other time, and observed that at least one of the complaint's allegations—that he dismissed complainant's suit—is demonstrably false. The subject judge was initially assigned to the litigation but recused himself approximately nine months before the case was dismissed. The docket sheet shows that the suit was dismissed by a different state judge.

In evaluating a complaint, the chief judge is not allowed to make findings of fact "about any matter that is reasonably in dispute." 28 U.S.C. §352(a). This does not mean that the chief judge must accept implausible allegations, however. Just as complaints filed in court may be dismissed if the allegations are not plausible, see *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009), so complaints under the 1980 Act may be dismissed when they are frivolous or implausible. See Rule 11(c)(1)(C) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, and the accompanying commentary. A chief judge also may dismiss any complaint that is incapable of being established by investigation. 28 U.S.C. §352(b)(1)(A)(iii); Rule 11(c)(1)(E). The allegation that the subject judge received a bribe is both implausible and incapable of being established by investigation. I have no idea what "Money Stock" might be—and complainant does not relate how he knew that the envelope contained something of value, as opposed to a legal document. Even in judicial systems known for their corruption (as the subject judge's former court is not), lawyers do not hand judges envelopes containing either money or stock in public view, let alone in the view of two other judges plus the litigant to be disadvantaged by the bribe. And at this remove—more than eight years after the events—it would be impossible to determine what was in any particular envelope handed to a judge. The one thing that *can* be ascertained with confidence is that the subject judge did *not* dismiss (or "cancel") complainant's suit in state court.

Because the allegation is both implausible and incapable of being established so long after the events, this aspect of the complaint is dismissed under §352(b)(1)(A)(iii).