

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

April 27, 2011

FRANK H. EASTERBROOK  
Chief Judge

No. 07-11-90026

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant filed a series of bankruptcy actions over the course of a decade. In the most recent proceeding she proposed to reopen an adversary action and relitigate a matter that has already been decided after a bench trial. After receiving written submissions from complainant and several adverse parties, the bankruptcy judge read into the record a decision that declined to allow any further proceedings.

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. If the bankruptcy judge erred, the remedy was an appeal to the district judge, see 28 U.S.C. §158, rather than a complaint under the 1980 Act.

According to complainant, the judge violated Canon 3B(5) of the Code of Conduct for United States Judges by failing to take “appropriate action upon learning of reliable evidence indicating the likelihood that ... a lawyer violated applicable rules of professional conduct.” Complainant believes that lawyers committed fraud during the bankruptcy proceedings. This was a principal basis of an adversary proceeding that complainant initiated in 2009 and that was the subject of a bench trial in July 2010. The subject judge resolved that proceeding adversely to complainant. Complainant

disagrees with the judge's decision, but a complaint under the 1980 Act cannot be used to contest adverse findings of fact made after a trial. Section 352(b)(1)(A)(ii) directs such issues to the appellate process within the judiciary; the Judicial Council is an administrative body rather than a forum for appellate review.

Complainant is dissatisfied not only with the decision on the merits but also with what she considers ill treatment during the session at which the decision was announced. She contends that the judge refused to let her speak except for one question at the end. I conducted a limited inquiry, see Rule 11(b) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, and asked the judge to have a transcript prepared. I have reviewed that transcript and conclude that this aspect of the complaint is unfounded.

The transcript and the subject judge's letter to me explaining the status of the litigation show that the session was not held for the purpose of receiving legal or factual argument. It is true that complainant was not allowed to present argument, but neither were the lawyers for other parties. Arguments had been made earlier. Complainant has initiated a lengthy series of both contested matters and adversary proceedings. This particular session was called to announce a ruling on a request to reopen the adversary proceeding that had been tried and resolved in July. A judge does not commit misconduct by confining a session to the object for which it was convened.

Nor was the judge rude or even abrupt. After the judge had completed her explanation, complainant spoke: "I have just one question about what you're saying right now. Will I be allowed to file a motion to avoid lien for the secured property?" The subject judge replied: "In the bankruptcy court you can't file anything because there will not be an open case. There won't be a case for you to file a motion in. State court, if there's a proceeding going on in state court, it's up to the state court judge as to what you can and can't file. There will be, after today, no open bankruptcy case. The bankruptcy case is over, so there's nowhere to file a motion." That helpful and accurate answer was entirely polite. Complainant did not speak again. Complainant's assertion that she was cut off or ignored is dismissed under §352(b)(1)(A)(iii) because it is conclusively refuted by objective evidence.