

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

March 26, 2012

FRANK H. EASTERBROOK
Chief Judge

No. 07-12-90014

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant, a federal prisoner, filed a civil suit. The district court asked the prison for financial information so that it could decide whether complainant owes a partial filing fee—and, if so, how much. Complainant contends that the district judge has committed misconduct making this inquiry, which he describes as an *ex parte* contact with another litigant.

There are several problems with this contention. First, the inquiry was made by the clerk's office, not by the judge. The Judicial Conduct and Disability Act of 1980 applies only to judicial officers. Second, the request was not made *ex parte*; complainant was notified. He attaches a copy to his complaint, which shows that nothing has been done behind his back. Third, there was nothing improper about the request. Complainant contends that it violates the Privacy Act, 5 U.S.C. §552a, and other statutes. Yet the request is authorized by 28 U.S.C. §1915, a more recent statute. Section 1915(a) directs prisoners to provide financial information, including a certified copy of any prison trust account, with the request for leave to proceed in forma pauperis. A district court would be entitled to deny a request summarily—and dismiss the suit for failure to pay required fees—if a prisoner fails to submit the required information. But §1915(b) adds that, “[n]otwithstanding subsection (a)”, a district court may determine the partial fee using a particular formula. Subsection (b) contemplates that the court will gather this information on its own. That's all the district court has done.

If complainant does not want his financial information revealed to the court, he must either prepay all required fees or refrain from filing suits. He cannot sue, ask to be treated as a pauper, yet conceal relevant financial information.