

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

May 14, 2012

FRANK H. EASTERBROOK
Chief Judge

No. 07-12-90024

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant, a federal prisoner, is also a debtor in bankruptcy. He submitted some documents to the bankruptcy court with a signature in the form "Debtor by X." (I have replaced the names with placeholders in light of 28 U.S.C. §360(a).) The bankruptcy judge said in open court that it had been called to his attention that X, rather than complainant, had signed the documents. X is not a lawyer. The judge struck the filings and directed X to submit no further documents on complainant's behalf. Complainant contends that this decision constitutes 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). Allegations of this complaint concerning the role of X fit that description. If the bankruptcy judge erred in striking the filings, the remedy is by appeal to the district judge. Complainant observes that Fed. R. Bankr. P. 9010(a)(2) allows third parties, with a debtor's consent, to "perform any act not constituting the practice of law", and he contends that affixing a litigant's name, with the litigant's permission, to documents that the litigant himself drafted is not "the practice of law." The district judge (and if necessary the court of appeals) will decide whether that contention is right. The Judicial Council is not an alternative forum for the review of procedural arguments in pending cases.

Complainant also contends that the subject judge may have engaged in *ex parte* communications. That possibility is outside the scope of §352(b)(1)(A)(ii). The only reason complainant gives for suspecting *ex parte* contacts, however, is the judge's statement that X's role had been "called to my attention." I asked the subject judge how the matter came to his attention. He replied that it was drawn to his attention by the staff of the clerk's office. That is a normal procedure for federal litigation. Fed. R. Bankr. P. 5005(a)(1) requires the clerk's office to accept a document tendered for filing, even if the clerk believes that the document is procedurally defective or deficient. The clerk's office is supposed to alert the judge, who then decides what should be done. That's what happened here. Complainant offers no reason to believe that anything out of the ordinary occurred. This aspect of the complaint is dismissed under §352(b)(1)(A)(iii).