

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

September 6, 2012

FRANK H. EASTERBROOK
Chief Judge

No. 07-12-90064

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant is a debtor in bankruptcy. After she accused her lawyer of misconduct, he abandoned the representation and returned her fee. Complainant treats this as an admission. She then asked the Trustee to report her former lawyer to the state bar's disciplinary body. After the Trustee declined, she asked the bankruptcy judge to direct the Trustee to make such a report. The judge declined, and complainant contends that by doing so the judge committed 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). To the extent that complainant wanted the judge to undertake a judicial act, this subsection would apply.

Complainant contends, however, that she was not seeking any judicial relief but rather called on both the Trustee and the judge to fulfil their duties as members of the bar. She relies in this respect on some outdated rules, including a local rule of the district court that was rescinded in 2011. The currently applicable N.D. Ill. Local Rule 83.50 provides that the Model Rules adopted by the American Bar Association apply as a whole. (Local Bankruptcy Rule 9029-4A adopts the ethics rules of the district court.) Rule 8.3(a) of the ABA's Model Rules provides: "A lawyer who knows that another

lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority." This is the obligation that complainant believes the judge has violated.

There are two problems with complainant's position—one technical, the other substantive. The technical problem is that complainant reads "the appropriate professional authority" to mean the state's attorney-discipline body. But if complainant's lawyer behaved inappropriately, he did so in connection with federal litigation and in his role as a member of the bankruptcy court's bar, not in his capacity as a member of a state's bar. Local Rule 83.50 is a federal rule. The "appropriate professional authority" therefore is the federal court—concretely, the chief judge of the bankruptcy court. See Local Bankruptcy Rule 9029–4B.B.1. A failure to report complainant's former counsel to state officials cannot violate the district court's rules.

The substantive problem is that Local Rule 83.50 does not govern the ethical duties of the court's judges. It deals with the duties of lawyers. The 1980 Act does not address lawyers' conduct; it is limited to judicial officers. I am willing to assume that both complainant's former lawyer and the Trustee have violated their duties under Local Rule 83.50. That has no bearing on the judge's conduct, the only subject of the 1980 Act.

The judge's duties are specified not by Local Rule 83.50 (and derivatively by the ABA's Model Rules) but by the Code of Conduct for United States Judges. The Code of Conduct does not require judges to report lawyers for discipline. A judge is supposed to adjudicate disputes ("cases or controversies") that are properly before the court for resolution, rather than to act as a prosecutor or even as an ombudsman. Judges sometimes initiate disciplinary proceedings, but they have discretion whether to do so or not. See Canon 3.B.5, which provides that a judge "should take appropriate action upon learning of reliable evidence indicating the likelihood that ... a lawyer violated applicable rules of professional conduct". Unlike Model Rule 8.3, Canon 3.B.5 does not specify that judges always must report to disciplinary officials. A judge may well conclude, for example, that no report is "appropriate" if the client can complain on her own. I therefore dismiss this complaint under 28 U.S.C. §352(b)(1)(A)(iii) and Rule 11(c)(1)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, because it does not allege misconduct.

Complainant is free to ask the bankruptcy court (by filing information with its chief judge under Rule 9029–4B) to discipline both her former lawyer and the Trustee. She is free to bring her ex-lawyer's conduct to the attention of the United States Attorney. But the bankruptcy judge did not violate any ethical rule in deciding that this was not a matter he wished to place before the court's chief judge.