

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

September 11, 2013

FRANK H. EASTERBROOK
Chief Judge

No. 07-13-90064

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant is the plaintiff in a civil suit. Discovery is ongoing. Recently the district judge granted defendant's motion for a protective order and denied plaintiff's request that defendant be directed to provide additional material. The judge also denied plaintiff's request for an order that would have prohibited the defendant from filing a motion for summary judgment. Complainant asserts that these decisions constitute 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. If the judge's decisions are erroneous, complainant can seek review in the court of appeals once a final decision resolves the suit on the merits. The Judicial Council does not oversee the management of ongoing litigation.

Complainant asserts that the district judge must have engaged in ex parte contacts with the defendant's lawyer, accepted a bribe, or both. It is irresponsible to level such serious charges without evidence—and complainant does not offer the slightest evidence. The reasoning appears to be: "I should have prevailed on this motion; instead I lost; therefore the judge must have taken a bribe." That's a non-sequitur. *Every case,*

indeed every contested motion within a case, produces a loser as well as a winner. The judge's job is to decide when the parties cannot agree. That the judge has done his job and rendered a decision does not begin to hint at bias, bribery, ex parte conducts, or other misconduct. See *Liteky v. United States*, 510 U.S. 540 (1994). This aspect of the complaint is dismissed under §352(b)(1)(A)(iii) because it is "lacking sufficient evidence to raise an inference that misconduct has occurred".

The complaint's other allegations are dismissed for the same reason: they rest on nothing other than the fact that the judge has made decisions, and entered orders, that complainant thinks mistaken. That's a subject for appeal when the case is over in the district court, not for a proceeding under the 1980 Act.