

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

April 4, 2022

FRANK H. EASTERBROOK
Circuit Judge*

Nos. 07-22-90011, 07-22-90012

IN RE COMPLAINTS AGAINST TWO JUDGES

MEMORANDUM AND ORDER

Complainant accuses two judges of misconduct.

The first of the two complaints asserts that a district judge engaged in misconduct by failing immediately to remand to state court a suit that was removed by federal officials on the authority of 28 U.S.C. §1442(a). Complainant appears to believe that any removal of litigation over which state courts have original jurisdiction violates the Constitution and that every federal judge must know this.

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 against the district judge fit that description. Review of a decision not to remand is by appeal to

* Assigned to these complaints under 28 U.S.C. §351(c) and Rule 25(f) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. I have decided to address both complaints because the Chief Judge is disqualified from the second, and the first concerns the same underlying complaint.

the court of appeals, once the litigation has been concluded in the district court, not by a complaint under the 1980 Act.

The body of this complaint names a second judge who sits in a different judicial district. That name was omitted from complainant's response to the question "Name(s) of Judge(s)" and has no apparent relation to the removal of complainant's state-court suit, so I disregard him. Likewise complainant apparently seeks relief against several lawyers who played some role in the removal (or the events that complainant wants to litigate in state court). As the 1980 Act covers only federal judges, 28 U.S.C. §351(a), (d)(1), I disregard these persons as well.

The second complaint concerns the steps that complainant was told to take to get his initial complaint under way. The papers he tendered were initially returned by the Clerk's Office, with a cover letter instructing him to read the relevant rules, revise his complaint, and resubmit it. Complainant expresses certainty that the original effort's only shortcoming, from the perspective of the Clerk's Office, must have been his failure to use the complaint form that the Clerk's Office makes available. He accuses the court's Chief Judge of misconduct for failing to train the staff of the Clerk's Office to ensure that no mistakes are made.

If the original complaint indeed was returned just for failure to use a form, that decision was erroneous. Rule 6(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings provides that a complainant "*may* use the form reproduced in the Appendix to these Rules or a form designated by the rules of the judicial council in the circuit in which the complaint is filed." (Emphasis added.) Rule 6(a) adds: "A form *is not necessary* to file a complaint, but the complaint must be written and must include the information described in (b)." (Emphasis added.) So if the Clerk's Office returned the proposed complaint simply because complainant did not use a form, then it made an error; but if it returned the proposed complaint because it was lacking some of the information required by Rule 6(b), or failed to satisfy the other subsections of Rule 6, then the decision was justified.

But in either event it is impossible to attribute any misconduct to the Chief Judge, whose duties do not include personally training employees of the Clerk's Office or ensuring that they never make mistakes. Training and monitoring are the province of the Clerk (or a designated subordinate). The Rules for Judicial-Conduct and Judicial-Disability Proceedings set out the requirements for valid complaints and the administrative steps needed to handle them properly. It is up to the Clerk's Office to comply, with oversight by the court's highest administrative body, the Judicial Council. This complaint is dismissed under 28 U.S.C. §352(b)(1)(A) because it does not allege that the Chief Judge has committed any conduct covered by §351(a).

Complainant may petition the Judicial Council of the Seventh Circuit for review of this order in accordance with Rules 11(g)(3) and 18(b) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. 28 U.S.C. §352(c). Any petition for review that complainant elects to file must be received in the clerk's office of the United States Court of Appeals for the Seventh Circuit within 42 days of the date of this order.