

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

June 24, 2008

FRANK H. EASTERBROOK
Chief Judge

No. 07-08-90051

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant alleges that a magistrate judge has engaged in misconduct. Evaluation of the complaint is complicated by the fact that the magistrate judge serves in a dual capacity: as clerk of a district court and as a part-time magistrate judge. This dual capacity has been a source of confusion for the *pro se* complainant. The Judicial Conduct and Disability Act of 1980 applies only to judicial officers, see 28 U.S.C. §351(d)(1), so this complaint must be dismissed as outside the scope of the Act to the extent it concerns the subject judge's acts as clerk of court. See 28 U.S.C. §352(b)(1)(A)(i).

The complaint begins by saying that the magistrate judge has reduced respect for the judiciary by meeting with lawyers in an *ex parte* manner. Complainant asserts (and I certainly believe) that complainant overheard a lawyer in the clerk's office ask for the person to discuss "magistrate judge business" and, when told that this person was not in the office, say that he would look elsewhere. Given that the subject person is the clerk of court, that's entirely appropriate. No rule or ethical consideration prevents a clerk of court from meeting with a lawyer to discuss matters that will be submitted to a magistrate judge for decision. To the contrary, it is an important part of a clerk's duties to ensure that matters are prepared appropriately and reach the magistrate judge in a timely fashion; discussing matters with counsel may help to achieve this. Moreover, there would be no problem even if counsel were looking for the subject person to make a presentation in the person's capacity as a magistrate judge. Many duties of a magistrate judge—issuing search warrants, for example—are conducted *ex parte* with complete propriety. There is no basis for inferring misconduct from the fact that a lawyer wanted to find a clerk of court who also serves as a magistrate judge.

Complainant also misunderstands the proceeding concerning her that occurred in this district. Complainant describes it as an "extradition" that was irregular because the Governor of the receiving state did not request extradition. But the criminal charges against complainant were federal. When a person who faces federal charges in one

district is arrested in another, a transfer occurs administratively. An extradition is a process involving multiple states (or the United States and a foreign nation); the United States is a unitary government and does not “extradite” its prisoners from one place to another. The proceeding that occurred concerning complainant in this district court was (or would have been) an initial appearance coupled with a transfer under Fed. R. Crim. P. 5(c)(2) and (3). Such proceedings are properly handled by federal magistrate judges without the participation of a district judge. Complainant, who was represented by counsel, waived the transfer proceeding. Everything else was a matter of administrative routine and did not require judicial action.

At all events, 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 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, to the extent that complainant contests the disposition of the Rule 5 transfer proceeding.