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

July 9, 2007

No. 07-7-352-20

IN RE COMPLAINT AGAINST [redacted]

[redacted]
Complainant

ORDER

The Chief Judge gave complainant 14 days to show cause why the Council should not enter an order under Rule 1(f) of the Rules of the Judicial Council of the Seventh Circuit Governing Complaints of Judicial Misconduct or Disability restricting his pattern of misuse of the complaint procedure. Complainant has ignored this directive. Because the time has expired, the matter is ready for decision.

During a little more than two years, complainant has filed 11 complaints under the Judicial Conduct and Disability Act of 1980. All of these complaints, like all of complainant's litigation in federal court, arise out of an effort to have the federal judiciary review the decisions of the state judiciary concerning the administration of a trust. Every time complainant loses, in state or federal court, a new suit is promptly filed--often naming the judge in the previous suit as an additional defendant. And, soon after each suit is resolved, complainant files a charge of misconduct under the 1980 Act. All of these charges have been dismissed on the basis of 28 U.S.C. §352(b)(1)(A)(ii), which provides that the 1980 Act does not permit the review of any official action of a judge in the administration of litigation. Complainant has ignored these decisions; none of his 11 complaints makes any effort to demonstrate that his complaints are compatible with §352(b)(1)(A)(ii) and otherwise within the scope of the 1980 Act.

Complainant's repetitious and frivolous litigation has led the district court to enter an anti-suit injunction. Likewise the Council concludes that complainant's abuse of the processes under the 1980 Act must be brought to a halt. Every complaint consumes time of both the Chief Judge (who conducts the screening) and 20 additional Members of the Council. Diversion of judicial time to the consideration of repetitious frivolous claims disserves the interests of other litigants, who have a better claim on scarce judicial time.

Curtailing frivolous complaints under the 1980 Act, while leaving room for serious ones, is a difficult task because the Council is not a judicial forum. Standard grants of sanctioning power, such as Fed. R. Civ. P. 11 and 37, and Fed. R. App. 38, are not available. Requiring complainant to submit future complaints for screening would not do much to conserve judicial resources; the screening process (and the inevitable appeal to the Council) could take as much time as the standard decisional process under the 1980 Act.

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Under the circumstances, therefore, the only approach that holds much prospect is the creation of a financial hurdle. Normally no filing fee is charged for a complaint under the 1980 Act. Nothing in the statute precludes the use of a financial gateway as a sanction for demonstrated misconduct, however. Just as filing fees for initiating lawsuits and appeals screen out some frivolous litigation, so financial incentives can help curtail frivolous complaints under the 1980 Act.

The Chief Judge proposed a deposit of $1,000, which complainant must post with any future complaint under the 1980 Act. Such a deposit is enough to make a complainant think seriously before filing--though it still falls short of the costs that the federal judiciary incurs in using 21 judges to resolve a complaint.

The Council agrees with this solution. To ensure that any non-frivolous complaint can be heard and resolved on the merits without expense to the complaining party, this deposit will be refunded if the Chief Judge determines that a complaint has any arguable merit. If, however, a future complaint follows the model of the 11 already considered and rejected, then the deposit will not be refunded. And any complaint tendered without the required deposit will be returned unfiled.

It is so ordered.