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

February 11, 2008

FRANK H. EASTERBROOK
Chief Judge

No. 08-7-352-08

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant, the plaintiff in a suit that has recently been resolved on appeal, believes that the district judge "may have been misled by [counsel for the defendants] or, at worst, colluded with them."

Being misled by a litigant is regrettable but not a form of judicial misconduct. Complainant apparently believes that the judge would have been less susceptible to deception had he toured the defendants' premises and inspected for himself some of the matters contested in the litigation. This is not, however, an appropriate activity for a judge. Litigation must be resolved on the record, not as a result of a judge's effort to emulate a private detective.

Collusion with a litigant, or a litigant's lawyer, would be misconduct, but complainant offers not a shred of evidence for this serious charge. The complaint's structure is along the lines of: "I should have won; instead I lost; thus the judge and the other side must have been in cahoots." That's not a sensible inference; it does not take an assumption of collusion to explain the fact that one side or the other must lose every lawsuit that is not settled, and that many of these unsuccessful litigants think that they should have prevailed. As it happens, complainant didn't really lose; the district judge (and the court of appeals) held only that the claim must proceed in state rather than federal court. So the complaint is dismissed because it lacks "sufficient evidence to raise an inference that misconduct has occurred". 28 U.S.C. §352(b)(1)(A)(iii).