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

February 12, 2008

FRANK H. EASTERBROOK
Chief Judge

No. 08-7-352-09

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant is convinced that the defendants in a federal suit that was resolved some years ago have failed to comply with the judgment, which requires payments to members of a class. He believes that the defendants have mailed checks to incorrect addresses and have not followed up to ensure that the class members receive the money owed them.

Complainant, who is neither a member of the class nor one of its lawyers, has filed a suit in state court seeking to compel payment (and, not incidentally, to collect a share of the fund for his troubles). In this proceeding under the Judicial Conduct and Disability Act of 1980 complainant accuses the federal judge of misconduct because the judge has not done enough to help the class members.

The district court's docket in the federal case has 625 entries. Complainant does not try to show that, in making any of his decisions, the judge acted improperly—and, had complainant challenged any of the judge's decisions, these proceedings would be barred by 28 U.S.C. §352(b)(1)(A)(ii), which says that any complaint "directly related to the merits of a decision or procedural ruling" must be dismissed.

Instead of contesting anything that the district judge had done, complainant appears to think that the judge's failure to do more for the plaintiffs is misconduct. Yet judges do not "do more" in the abstract; they are not ombudsmen. Judges respond to motions

and other formal documents. None of the class members or their lawyers has been prevented from making any filing needed to protect the interests of injured parties. Whether the defendants have complied fully with the judgment is not an open question under the 1980 Act, which covers the conduct of the federal judiciary rather than the conduct of litigants and lawyers.

Complainant characterizes as "theft" the district judge's failure to take steps that none of the litigants has requested and says that the judge "may" have conspired with the defendants. Charging a federal judge with "theft" and "conspiracy" is most serious. A grave accusation calls for proof. But complainant does not offer even a smidgeon of evidence that the judge has conspired with anyone, taken money for himself, or diverted money to anyone other than an authorized recipient.

How to deal with unclaimed awards in class-action suits is a difficult problem of long standing. It has received extensive attention by the Committee on Rules of Practice and Procedure and in the scholarly literature. One section of the *Manual on Complex Litigation* dealing with this subject suggests that activities of the sort in which complainant is engaged may be seen as an effort to siphon money from class members.[*] It is not possible to make advances by hurling unsubstantiated charges of "theft" and "conspiracy" against a judge who must decide how best to protect the class's interests. This 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).

[*] "The court and counsel should be alert to the possibility of persons soliciting class members after the settlement and offering to provide 'collection services' for a percentage of the claims. Such activities might fraudulently deprive class members of benefits provided by the settlement and impinge on the court's responsibility to control fees in class actions." *Manual on Complex Litigation* §21.662 (4th ed. 2004) (footnote omitted).