

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

October 23, 2008

FRANK H. EASTERBROOK
Chief Judge

No. 07-08-90096

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant, a state prisoner, has filed a federal collateral attack on his conviction. The warden asked for more time to answer the petition, and complainant prepared an opposition to that motion. He says that prison officials intentionally delayed transmission of that document to the court, so that the judge ruled without the benefit of complainant's views—and that the judge committed misconduct by ruling before the date set for a status conference.

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). The allegations of this complaint fit that description. “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). When to resolve pending litigation—in particular, whether to wait for additional submissions from the litigants—is a procedural ruling. If the district judge erred, that error may be addressed on appeal. The judicial council is an administrative rather than a judicial body.

As it happens, the judge's ruling had nothing to do with the question whether the warden should have been allowed extra time to respond. The judge ruled that complainant has not exhausted his state remedies, and the court dismissed the petition without prejudice to renewal. Complainant believes that he has used all available state remedies. If this is so, then the district judge's decision is mistaken. But *whether* it is so is a question for the court of appeals rather than the judicial council. Section §352(b)(1)(A)(ii) applies to this line of argument too.