

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

March 2, 2007

FRANK H. EASTERBROOK
Chief Judge

No. 07-7-352-8

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant, a prisoner serving a state sentence, commenced a federal collateral attack in 2004. The proceeding was assigned to a magistrate judge under 28 U.S.C. §636(c)(1) on the consent of all parties. Briefs were filed, and the matter apparently has been under advisement since April 27, 2005. Complainant is dissatisfied that no decision has been forthcoming and that the magistrate judge has not responded to a “Motion for Judicial Resolution” filed in February 2006 and two “Motions for Substitution of Judge” filed within the last four months.

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).

Although delay in judicial decision-making is unfortunate and undesirable, the substantial caseload assigned to federal judges makes it impossible for them to resolve all litigation with the dispatch that would characterize an ideal system. That is why decisions about the allocation of time are merits-related and outside the scope of the statute. See Standard 2, *supra*, at 146 (“A complaint of delay in a single case is properly dismissed as merits related.”). Delay in one case does not imply that the judge is unwilling or unable to

handle the litigation on his docket. Moreover, there is no such thing as a "Motion for Substitution of Judge" in federal practice; the federal courts, unlike those of some states, do not entitle litigants to an automatic change of judge.

Delay in resolving a collateral attack on a criminal conviction is especially unfortunate, because if the claim is meritorious the prisoner is entitled to freedom. The time taken to issue a decision, now approaching two years, is unusually lengthy when personal liberty is at stake. Nonetheless, any remedy would be by petition for mandamus, not by a complaint under the 1980 Act.