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

October 3, 2012

FRANK H. EASTERBROOK
Chief Judge

No. 07-12-90075

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant, a state prisoner, is the plaintiff in civil litigation. Earlier this year he complained that the district judge was taking too long to resolve his suit. I dismissed that complaint (No. 07-12-90007) in reliance on 28 U.S.C. §352(b)(1)(A)(ii), which provides that any complaint "directly related to the merits of a decision or procedural ruling" must be dismissed. See also Rule 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. I informed complainant that a judicial decision about which cases deserve priority comes within this statute. See Rule 3(h)(3)(B); see also Standard 2 for Assessing Compliance with the Act, *Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice* 146 (2006).

The current complaint once again contends that the district judge is taking too much time. This time complainant maintains that delay in ruling on his motion for a preliminary injunction is unjustified. He asserts that the judge should have declared defendants in default and issued an injunction in July 2012. According to the docket, however, defendants have not defaulted but are seeking an order requiring plaintiff to submit to an examination so that some of his allegations can be verified; that request remains under advisement.

At all events, this complaint has the same problem as No. 07-12-90007: it is incompatible with §352(b)(1)(A)(ii). The current complaint ignores both that statute and my decision of earlier this year, in which I informed complainant that §352(b)(1)(A)(ii) applies to claims of delay. The remedy for undue delay is a request for a writ of

mandamus by the court of appeals (or, potentially, an appeal from the judge's failure to act, if delay has the practical effect of denying the request for an injunction). The 1980 Act is not a substitute for the normal process of appellate review.

This is complainant's third charge against the same district judge. The first, No. 07-10-90044, included an allegation similar to one in the current complaint. In 2010 complainant asserted that a nurse had told him that she had private information about how one pending case would be decided. This time complainant asserts that a guard told him that the judge is waiting for the resolution of a state criminal charge against complainant. I informed complainant in 2010 that prison scuttlebutt cannot be used to show judicial misconduct. The repetition of a similar charge in 2012, coupled with complainant's failure to mention either the governing statute or my earlier decision dismissing a complaint about delay, leads me to give complainant this warning: Any future complaint that does not make a serious effort to show how it is compatible with §352(b)(1)(A) and my decisions (now three in number) will be dismissed summarily, and I will direct complainant to show cause why the Judicial Council should not curtail his repeated but apparently frivolous invocations of the 1980 Act.