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

December 26, 2012

FRANK H. EASTERBROOK
Chief Judge

No. 07-12-90096

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant and another person filed a civil action in state court. Defendants removed it to federal court, and plaintiffs asked the district judge to remand it. Ten months have passed, and the judge has not acted. Two months ago the judge promised that "[t]he court's ruling on the remand motion will issue shortly." Complainant believes that two months exceeds a plausible understanding of "shortly" and that the aggregate delay of ten months constitutes misconduct.

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). See also Rule 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. "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). The allegations of this complaint fit that description. Deciding which cases are in most urgent need of a judge's limited time is a procedural ruling, and §352(b)(1)(A)(ii) therefore applies to case-specific claims of delay. See Rule 3(h)(3)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

District judges should act promptly on motions to remand, for it is essential to resolve as quickly as possible which judicial system (state or federal) has jurisdiction. Until that is done, the litigation is stalled. But the 1980 Act does not authorize the Judicial Council to superintend the management of litigation. The appropriate step for a

litigant aggrieved by excessive delay is a petition to the court of appeals for a writ of mandamus. I trust that such a step will be unnecessary in this litigation.

Complainant also asserts that the district judge is biased. The only evidence in support of that accusation is the fact that the judge has warned complainant that frivolous filings may lead to sanctions. Such a warning does not evince bias; it is instead helpful to a litigant proceeding without the assistance of counsel. That a judge thinks poorly of a litigant's contentions also does not imply bias. See *Liteky v. United States*, 510 U.S. 540 (1994). At all events, "[a]n allegation that calls into question … a failure to recuse, without more, is merits-related" (Rule 3(h)(3)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings) and thus covered by §352(b)(1)(A)(ii).