

THE JUDICIAL COUNCIL OF THE SEVENTH CIRCUIT

219 South Dearborn Street
Chicago, Illinois 60604

February 6, 2007

FRANK H. EASTERBROOK
Chief Judge

No. 07-7-352-4

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

The complainant, who filed a suit *pro se* in federal court, accuses the district judge of judicial misconduct for delay in having summons issued to the defendants.

This is not a form of judicial misconduct. Pre-service review is appropriate in all litigation initiated *in forma pauperis*, as this was. See 28 U.S.C. §1915(e)(2). The district court screened and dismissed complainant's suit without the need for service of process on the defendants, and thus without the need for the federal Treasury to incur the expense of service. Although this process took ten months, which complainant alleges is excessive, both the decision to screen the complaint and the amount of time taken to conduct that screening are steps in the resolution of the litigation and thus outside the scope of the Judicial Conduct and Disability Act of 1980.

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.”). Complainant’s suit has been fully resolved in the district court and is pending on appeal. The time taken to handle this litigation cannot be classified as a form of official misconduct; delay in one case does not imply that the judge is unwilling or unable to handle the litigation on his docket.

To the extent the complainant alleges that delay (and an adverse decision) show that the judge is biased against him, that too is merits-related and must be dismissed under §352(b)(1)(A)(ii). See Standard 2, *supra*, at 146. (“A mere allegation that the judge should have recused is indeed merits related; the proper course is for a party to file a motion to recuse.”). The *Report’s* exception for refusal to recuse if the judge *knows* that recusal was legally required is not at issue here. The complaint does not offer any basis for an inference that the judge actually knew that recusal was obligatory.