

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

July 28, 2008

FRANK H. EASTERBROOK
Chief Judge

No. 07-08-90064

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant, a state prisoner, filed so many frivolous suits *in forma pauperis* that the district court entered an order providing that no more would be accepted unless complainant not only paid the full filing fee for the new litigation, but also paid his debt for filing fees in older cases. Cf. *Support Systems International, Inc. v. Mack*, 45 F.3d 185 (7th Cir. 1995). For the last eight years, complainant's prison has been remitting money to reduce the accumulated debt. He now contends that these payments are illegal and that the district judge should have prevented the clerk of the court from accepting them.

To the extent that complainant believes that the judge should not have entered the order that led the state prison system to remit the funds, the situation is governed by 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 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). An appeal, rather than a complaint under the 1980 Act, was the appropriate way to contest the district judge's order.

To the extent that complainant believes that the clerk has accepted funds not provided for by the order, §352(b)(1)(A)(ii) does not control, but this aspect of the complaint does not allege any judicial misconduct and so is dismissed under 28 U.S.C. §352(b)(1)(A)(i). Complainant apparently thinks that the minimum monthly payment established by 28 U.S.C. §1915(b)(1) is also the maximum that any state prison may remit to a federal court. That is not so. A minimum is a minimum. How much more a state prison chooses to remit is a question of state rather than federal law. Prison officials have substantial discretion in determining which of a prisoner's debts should be satisfied from funds in a prisoner's account. See *United States v. Sawyer*, 521 F.3d 792

(7th Cir. 2008). If complainant thinks that his prison should put the money to some other use, that is an issue to be taken up with the warden. (Of course, the slower complainant retires his federal debt, the longer it will be before he can file another suit without prepaying the entire filing fee.) This subject is outside the scope of the 1980 Act.

This is the second proceeding under the 1980 Act that complainant has filed in less than two months. The first contested the order restricting his ability to file more suits *in forma pauperis*. My order resolving that proceeding (No. 07-08-90044) informed complainant about §352(b)(1)(A)(ii). His current complaint ignores that statute. Any further filings by complainant will be subject to summary dismissal (and an order by the Judicial Council under Rule 10(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings) unless complainant makes a serious effort to show his grievance is compatible with §352(b)(1)(A)(ii).