

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

June 1, 2009

FRANK H. EASTERBROOK  
Chief Judge

No. 07-09-90064

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant, a lawyer, represents the plaintiffs in a civil action pending in district court. Defendant has moved to dismiss the complaint, and the motion has been under advisement for five months. Complainant asserts that the lack of a decision is conduct prejudicial to the effective and expeditious administration of justice.

Any complaint “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). “A complaint of delay in a single case is properly dismissed as merits related.” *Id.* at 146.

Complainant does not contend that the subject judge is unable to handle his docket in an expeditious way. There are many reasons for delay in a single case. Perhaps the judge was waiting for the Supreme Court’s decision in *Ashcroft v. Iqbal*, No. 07-1015 (U.S. May 18, 2009), which concerns pleading standards. But it does not matter why the judge has put this motion to one side, given §352(b)(1)(A)(ii).

Complainant speculates that the reason may be related to the fact that the defendant is a lawyer and joined the bar about the same time as the subject judge, and that they practiced in the same city until the subject judge joined the bench. How this could be material, complainant does not say. He does not contend that the subject judge is recused, and at all events that subject too is within the scope of §352(b)(1)(A)(ii).