

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

October 22, 2009

FRANK H. EASTERBROOK
Chief Judge

No. 07-09-90091

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant is the plaintiff in civil litigation against prison officials. He was released a decade ago, so the suit appears to be untimely. But the district court did not consider the claim's merits or potential defenses, such as the statute of limitations. Instead the judge dismissed the complaint as unintelligible and gave complainant a date by which he was to file a new complaint and pay the filing fee. Complainant did neither, so the judge dismissed the suit for failure to prosecute. Now complainant accuses the judge of misconduct for failing to rule on the complaint's merits.

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.

Complainant has filed many civil suits but persistently fails to pay the fees. While he was in prison, he "struck out" under 28 U.S.C. §1915(g) and thus had to prepay all filing fees. Now that he is no longer a prisoner, the obligation to pay filing fees continues. He has no legitimate grievance when suits filed without payment of the fees, or an affidavit of poverty, are dismissed without consideration of the merits.