

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

October 15, 2010

FRANK H. EASTERBROOK
Chief Judge

No. 07-10-90067

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant is a prisoner who has “struck out” under the Prison Litigation Reform Act and therefore may proceed *in forma pauperis* only if in “imminent danger of serious physical injury.” 28 U.S.C. §1915(g). Last July complainant filed a suit together with a request for leave to proceed *in forma pauperis*; he contended that the “imminent danger” requirement is met because, even though he is in the prison’s protective-custody unit, persons he has declared to be his “enemies” are in cells nearby. He contends that the district judge assigned to the case has committed misconduct by taking three months (and counting) to rule on his requests for *forma pauperis* status and an injunction.

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. Delay in resolving suits is regrettable, but a judge’s decision about which suits are most in need of attention is covered by §352(b)(1)(A)(ii). “A complaint of delay in a single case is properly dismissed as merits related.” *Report* at 146.

Two years ago, complainant filed another complaint under the 1980 Act asserting that a judge had committed misconduct by taking too long to rule on one of his actions. When dismissing that complaint (No. 07-08-90096), I informed complainant that §352(b)(1)(A)(ii) covers a district judge’s decisions about which suits deserve immediate attention. The current complaint asserts that §352(b)(1)(A)(ii) does not apply but does not address the explanation I provided two years ago. If undue delay occurs, a petition for mandamus may be appropriate. The Judicial Council, however, is an administrative rather than a judicial body.