

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

April 26, 2011

FRANK H. EASTERBROOK
Chief Judge

No. 07-11-90030

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant, a federal prisoner, recently commenced a civil suit in which he contends that the prison has violated the Internal Revenue Code. He seeks damages and an injunction. The suit has been pending for a month, and so far the judge has not granted petitioner any of the relief he seeks. He contends that the judge has committed a crime by not immediately ruling in his favor.

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. One kind of procedural ruling is deciding which pending cases deserve first priority. The *Report to the Chief Justice* concluded that allegations of delay in resolving a single suit thus come within §352(b)(1)(A)(ii).

Complainant must wait his turn in the queue for judicial decision. The defendants have yet to answer his complaint; the suit has barely begun. If unwarranted delay should occur, the right remedy would be a petition to the court of appeals seeking a writ of mandamus, not a complaint under the 1980 Act. Complainant must understand, however, that such a petition requires a filing fee, and if deemed frivolous would count as a “strike” under the Prison Litigation Reform Act. See 28 U.S.C. §1915(g).