

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

March 15, 2012

FRANK H. EASTERBROOK
Chief Judge

No. 07-12-90010

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant is a federal prisoner serving a long term. The court of appeals affirmed his conviction in 2007. Within the year allowed by 28 U.S.C. §2255(f), complainant filed a collateral attack on his conviction and sentence. Three and a half years later, that collateral attack remains pending in the district court. Complainant contends that this delay constitutes misconduct and must stem from some form of bias against him, or perhaps in favor of a third party who complainant believes is responsible for the crime of which he has been convicted.

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. The *Report* concludes, *id.* at 146, that a complaint concerning delay in a single case is covered by §352(b)(1)(A)(ii) because a judge’s decision about which pending matters deserve priority—or about how much time to invest in writing an opinion—is a “procedural ruling”. Complainant does not contend that the subject judge is generally behind in deciding cases, so the *Report’s* observation applies here.

Complainant appears to believe that the clerk's office in the district court has misplaced or altered some documents. He does not supply a factual basis for this belief, and at any event the 1980 Act applies only to judicial officers. The clerk, and the staff of that office, are not covered by this statute.

Collateral attacks on criminal judgments deserve, and should receive, expeditious resolution by district courts. A prisoner with a meritorious argument may be entitled to a new trial or even to immediate release. No one should be held in prison without an opportunity for a prompt determination of a challenge to the conviction or sentence. But the 1980 Act does not authorize the Judicial Council to superintend the administration of particular cases. If complainant believes that decision has been unduly delayed, to his detriment, he should ask the court of appeals to issue a writ of mandamus. I trust, however, that the district judge will soon render a decision, making such a step unnecessary.