

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

September 11, 2013

FRANK H. EASTERBROOK
Chief Judge

Nos. 07-13-90062 and -90063

IN RE COMPLAINT AGAINST TWO JUDICIAL OFFICERS

MEMORANDUM

Complainant filed a civil suit more than a year ago. The district judge and magistrate judge have so far taken no action of any kind. For example, they have not decided whether complainant is entitled to litigate *in forma pauperis* and have not ordered service of process on the defendants. Complainant believes that this inaction constitutes misconduct.

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. Deciding which cases deserve priority is a procedural disposition covered by §352(b)(1)(A)(ii). See Rule 3(h)(3)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. The right way to obtain review of a contention that a district judge has not acted in a timely fashion is to ask the court of appeals to issue a writ of mandamus. The Judicial Council does not supervise the administration of pending litigation.

The docket sheet in complainant’s case does not suggest any reason for the judges’ failure to act. Because complainant is a prisoner, or was when the case began, 28 U.S.C. §1915A(a) requires courts to screen proposed complaints “as soon as practicable” after

docketing. The court of appeals observed in *Wheeler v. Wexford Health Sources, Inc.*, 689 F.3d 680 (7th Cir. 2012), that a delay of ten months far exceeds what §1915A(a) allows and that most suits should be screened “within days of filing”. Here the delay already tops a year and the judges have not even hinted when they will turn to this suit. It is easy to understand complainant’s frustration.

Rule 3(h)(3)(B) provides that “habitual delay in a significant number of unrelated cases” can justify intervention by the Council under the 1980 Act. I hope that complainant’s experience does not signify a systemic problem in this district court. If the press of business prevents these judges from discharging their duties in a timely fashion, they should request the designation of other judges to assist them. In the absence of evidence establishing systemic delay, however, §352(b)(1)(A)(ii) requires me to dismiss this complaint. But complainant may well find the court of appeals receptive to a petition for mandamus, should the subject judges continue, despite *Wheeler*, to defer complying with §1915A(a).