

16-90054-jm
May 18, 2016
Chief Judge

**JUDICIAL COUNCIL OF THE
SECOND CIRCUIT**

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In re
CHARGE OF JUDICIAL MISCONDUCT

Docket No. 16-90054-jm

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ROBERT A. KATZMANN, *Chief Judge*:

On April 8, 2016, the Complainant filed a complaint with the Clerk’s Office of the United States Court of Appeals for the Second Circuit pursuant to the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351-364 (the “Act”), and the Rules for Judicial-Conduct and Judicial-Disability Proceedings, 249 F.R.D. 662 (U.S. Jud. Conf. 2008) (the “Rules”), charging a district judge of this Circuit (the “Judge”) with misconduct.

BACKGROUND

The Complainant moved to proceed in forma pauperis (“IFP”) in a pro se civil rights action against prison officials. The Judge denied IFP status and dismissed the complaint pursuant to the “three-strikes” provision of the Prison Litigation Reform Act, 28 U.S.C. § 1915(g), concluding that the Complainant had

failed to meet the imminent danger exception. The Complainant's appeal is pending in the court of appeals.

The misconduct complaint alleges that the Complainant is in imminent danger, and that the Judge ignored the Complainant's letter requesting reconsideration or leave to file an amended complaint.

DISCUSSION

The complaint is dismissed. The Complainant previously filed a similar complaint against a different judge, 16-90025-jm. We deny the current complaint for the same reasons.

An allegation that a judge, in reaching a decision, neglected to consider fully all arguments presented, failed to comprehend the meaning or import of certain statutes or cases, or disregarded certain key facts is merely challenging the correctness of the judge's decision. In other words, what such allegations contend is that the judge got it wrong, not that the judge engaged in judicial misconduct.

The allegations in the complaint fall largely into this category. They seek merely to challenge the correctness of the Judge's decisions and official actions—in particular, the Judge's decision about the three-strikes provision of

§ 1915(g). Accordingly, the complaint is dismissed as “directly related to the merits of a decision or procedural ruling.” 28 U.S.C. § 352(b)(1)(A)(ii); Rule 3(h)(3)(A) (“An allegation that calls into question the correctness of a judge’s ruling . . . , without more, is merits-related.”); 11(c)(1)(B). Purely merits-related allegations are excluded from the Act to “preserve[] the independence of judges in the exercise of judicial power by ensuring that the complaint procedure is not used to collaterally attack the substance of a judge’s ruling.” Rule 3 cmt. Such challenges can be pursued, to the extent the law allows, only through normal appellate procedures.

Moreover, the allegation that the Judge has ignored filings and failed to rule on reconsideration or leave to amend is wholly unsupported, and is therefore dismissed as “lacking sufficient evidence to raise an inference that misconduct has occurred.” 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(D). The district court docket does not reflect any motions or letters requesting reconsideration or leave to amend, and the district court’s clerk’s office reports that all filings have been docketed.

The Clerk is directed to transmit copies of this order to the Complainant and to the Judge.