

15-90074-jm; 15-90076-jm  
November 6, 2015  
Chief Judge

**JUDICIAL COUNCIL OF THE  
SECOND CIRCUIT**

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In re	Docket Nos.	15-90074-jm
CHARGES OF JUDICIAL MISCONDUCT		15-90076-jm

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ROBERT A. KATZMANN, *Chief Judge*:

On September 8, 2015, and September 15, 2015, the Complainant filed complaints 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 two district judges of this Circuit (Judges “A” and “B”) with misconduct.

**BACKGROUND**

The Complainant filed two actions in district court against numerous individuals based on their involvement with a state court action in which the Complainant was found to have engaged in fraudulent business practices. (The

Complainant sold items purportedly made of jade; a specific buyer alleged that the items were composed of an inferior material.)

The first action challenged the state courts' factual and legal findings, alleged numerous procedural deficiencies in the state court proceedings, and contended that the defendants – various state officials, including state judges – had engaged in an abuse of process, fraud, and conspiracy, thereby violating the Complainant's constitutional rights. The specific buyer who brought the fraudulent business practices to the attention of the authorities was not named as a defendant; however, the district court construed the Complainant's pleading as bringing a claim against this buyer, and directed that the buyer be served with the complaint.

The second action raised fraud and breach of contract claims against the buyer and a corporation the buyer purportedly used to commit fraud.

Judge A granted the defendants' motions to dismiss in the first action, finding that the Complainant's claims were barred by the *Rooker-Feldman* doctrine and collateral estoppel, and that the defendants were immune from suit. Judge A also dismissed the buyer from the second action. The Complainant filed multiple motions seeking Judge A's recusal and the "annulment" of his decisions. Judge A

denied the motion for annulment, but recused himself from the case.

In the second action, the Complainant was provided multiple opportunities to serve the corporation or provide proof of service; Judge B dismissed the complaint for failure to prosecute.

The court of appeals dismissed appeals in both cases as frivolous.

The lengthy, detailed misconduct complaints challenge many of the decisions and procedural rulings of the Judges in the underlying actions. The complaints specifically allege that: [i] Judge A was biased against the Complainant; [ii] Judge A conspired with the defendants and the clerk of court; [iii] Judge B “conspired with [Judge A] to prevent [the Complainant’s] access to the court’s adjudication on [the] merits and violated [his] minimal due process”; and [iv] Judge B engaged in ex parte communications with the defendants.

## **DISCUSSION**

The complaints are dismissed.

The gravamen of the complaints seeks to challenge the correctness of the Judges’ various decisions and procedural rulings in the underlying actions. What these allegations contend is that the Judges got it wrong, not that they engaged in judicial misconduct. The allegations are therefore 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.

The allegations of bias, conspiracy, and ex parte communications appear entirely derivative of the merits-related charges, but to the extent they are separate, they are wholly unsupported, and are 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). *See also In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability*, 591 F.3d 638, 646 (U.S. Jud. Conf. Oct. 26, 2009) (“Rule 6(b) makes clear that the complaint must be more than a suggestion to a Chief Judge that, if he opens an investigation and the investigating body looks hard enough in a particular direction, he might uncover misconduct. It must contain a specific allegation of misconduct supported by sufficient factual

detail to render the allegation credible.”). A decision for or against a party does not evidence bias. Nor do several such decisions.

The Complainant also requests that the complaints be transferred to another circuit, based on the allegations of conspiracy. That request is denied.

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