

15-90067-jm
October 19, 2015
Chief Judge

**JUDICIAL COUNCIL OF THE
SECOND CIRCUIT**

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In re
CHARGE OF JUDICIAL MISCONDUCT

Docket No. 15-90067-jm

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ROBERT A. KATZMANN, *Chief Judge*:

On August 17, 2015, 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

In 2007, the Complainant filed a pro se medical malpractice action in state court following his wife's death. In 2011, the defendants removed the case to federal court. The Complainant amended his complaint to include references to racial discrimination and intimidation by the state court judge. The case was

assigned to the Judge. Before any dispositive rulings in the district court, the Complainant filed an interlocutory appeal and two mandamus petitions alleging, systemic discrimination by the state court judge. The court of appeals construed the interlocutory appeal as an additional request for mandamus relief, denied the mandamus petitions, and warned the Complainant against future frivolous filings. While the interlocutory appeal was pending, the Judge vacated several of his own orders, explaining that he lacked jurisdiction until the appeal concluded.

Over the course of the proceedings, the Judge denied the Complainant's motions for summary judgment, transfer, default, and appointment of counsel, and ordered him not to file any further papers until directed to do so. The Judge subsequently denied requests for reconsideration, as well as an untimely request to remand to state court. The Judge dismissed the complaint in part for failure to state a claim, granted summary judgment for the defendants on other claims, and declined to exercise supplemental jurisdiction over the remaining state law claims, remanding them to state court. As to the state court judge, the Judge noted that none of the state court judges referenced in the complaint had been named as defendants. The Complainant's appeal is pending in the court of

appeals.

The misconduct complaint alleges that the Judge should have imposed some sanction on the state court judge for racial discrimination and intimidation during the state court proceedings, particularly as the complaint had been amended to include those allegations. The misconduct complaint points out that in 2015 the state court judge was not reappointed based, at least in part, on the Complainant's allegations of racial bias. In addition, the misconduct complaint alleges that the Judge: [i] lacked jurisdiction based on the interlocutory appeal and the mandate of the court of appeals; [ii] should have remanded all of the claims to state court; [iii] failed to respond to the Complainant's post-judgment demand for explanation of the Judge's failure to address the state judge's actions; and [iv] caused a two-year delay in the proceedings.

DISCUSSION

The complaint is dismissed.

The vast majority of allegations in the complaint seek merely to challenge the correctness of the Judge's rulings in the underling action, including the dismissal of certain claims and the remand of others. What these allegations contend is that the Judge got it wrong, not that he engaged in judicial misconduct.

Accordingly, these allegations are 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 concerning delay (both prior to judgment and in relation to the post-judgment filing) are similarly dismissed as merits related. 28 U.S.C. § 352(b)(1)(A)(ii); Rule 3(h)(3)(B) (excluding from cognizable misconduct “an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases”); Rule 3 cmt. (“[A] complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge—in other words, assigning a low priority to deciding a particular case.”).

Any allegation against the state court judge is dismissed because the Act only applies to the conduct of federal judges. *See* 28 U.S.C. § 351(a), (d)(1); Rule 4.

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