

15-90056  
October 19, 2015  
Chief Judge

**JUDICIAL COUNCIL OF THE  
SECOND CIRCUIT**

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In re  
CHARGE OF JUDICIAL MISCONDUCT

Docket No. 15-90056-jm

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ROBERT A. KATZMANN, *Chief Judge*:

On June 26, 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**

The Complainant filed an action in district court alleging that prison officials and employees violated his rights under the Eighth Amendment and the Americans with Disabilities Act (“ADA”). The Complainant is legally blind and

suffers from mental illness. He asserted that he was deprived of prescription eyeglasses and contact lenses; denied accommodations that would enable him to access prison library services; subjected to double-celling (which exacerbated his mental illness); and was provided inadequate medical treatment for knee and wrist injuries. The case was assigned to the Judge.

In her initial review of the case, the Judge dismissed the Complainant's claims against some of the twenty-seven defendants, pursuant to 28 U.S.C. § 1915A. The court of appeals dismissed the Complainant's appeal from that order. The Complainant moved for preliminary injunctive relief to obtain, among other things, prescription eyewear, and for an evidentiary hearing. The Judge granted the request for prescription eyeglasses, but denied injunctive relief in all other respects, and denied a hearing. The Judge also denied the Complainant's two motions for default judgment.

The Complainant appealed these rulings. The court of appeals found that the Judge had properly denied relief with regard to the Complainant's medical claims, but erred in ruling that the Complainant's transfer to a new prison mooted his challenge to the conditions of his confinement, and in failing to hold an evidentiary hearing to determine whether he was deprived of meaningful access

to prison library services. The court dismissed the appeal for lack of jurisdiction to the extent it challenged the denial of the motions for default judgment.

On remand, the Judge scheduled a hearing for April 2015; however, the hearing was postponed pending the appointment of pro bono counsel. (Counsel has since been appointed and the hearing is scheduled for December 2015.) The Complainant moved for an order of civil contempt, asserting that the defendants failed to provide him with prescription eyeglasses as required. Following a hearing, the Judge denied the motion; the court of appeals dismissed an appeal from that order. The Judge also denied the defendants' motion for summary judgment and the case is proceeding to trial.

The misconduct complaint provides a lengthy, detailed history of the underlying proceedings, reiterating that the defendants have acted with "gross deliberate indifference" regarding the Complainant's serious medical needs in violation of the Eighth Amendment and the ADA. With regard to the Judge, the complaint alleges that the Judge erred with respect to three specific decisions: [i] her dismissal of the complaint as to certain defendants; [ii] her denial of a preliminary injunction; and [iii] her denial of an order of contempt. The complaint asserts that the Judge is biased against the Complainant because he is a

“legally blind disabled prisoner” and that her bias is evident in her “willful abuse of discretion.” The complaint also alleges that the Judge was ordered by the court of appeals to hold an evidentiary hearing “but refuses to do so.”

## DISCUSSION

The complaint is dismissed.

The gravamen of the complaint is that the Judge erred in her decisions dismissing the Complainant’s claims against certain defendants, denying injunctive relief, and denying an order of civil contempt. But error is not misconduct. 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.”). 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.

Any allegation concerning the lack of an explanation for these decisions is

also dismissed as merits related. See *In re Mem. Dec. Judicial Conference Comm. Judicial Conduct and Disability*, 517 F.3d 558, 562 (U.S. Jud. Conf. 2008) (noting that “[t]he merits of a decision and the reasons given or not given for it are often inseparable,” and holding accordingly that “the giving or not giving of reasons for a particular decision, like the reasons themselves, should not be the subject of a misconduct proceeding”).

The allegations of bias appear entirely derivative of the merits-related charges; but to the extent these allegations 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). A decision for or against a party does not evidence bias. Nor do several such decisions. The Complainant points to the Judge’s “refusal” to hold an evidentiary hearing as evidence of bias; however, the docket sheet indicates that the hearing is scheduled for December 2015. Otherwise, the Complainant has pointed to nothing other than the decisions themselves to support the claims of bias.

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