

15-90047-jm
September 30, 2015
Chief Judge

**JUDICIAL COUNCIL OF THE
SECOND CIRCUIT**

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In re
CHARGE OF JUDICIAL MISCONDUCT

Docket No. 15-90047-jm

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ROBERT A. KATZMANN, *Chief Judge*:

On May 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 was convicted of multiple counts related to drug trafficking and firearm offenses. A district judge, who has since retired, presided over the Complainant's criminal trial and sentenced him to a term of imprisonment.

Nine years later, the Judge granted a habeas petition vacating certain of the firearm offenses in light of subsequent Supreme Court precedent. The Judge resentenced the Complainant after a hearing; the court of appeals affirmed the sentence. The Complainant filed numerous additional motions seeking to vacate the sentence. The Judge denied those motions. The Complainant has also filed at least thirteen actions in the court of appeals; those appeals are closed.

This is the second misconduct complaint the Complainant has filed against the Judge. The first alleged that the Judge attempted to “cover up the corruption” of the trial judge. It was dismissed as merits related and as lacking sufficient evidence to infer any misconduct.

This second complaint against the Judge alleges that the Judge attempted to “cover up the corruption” of the prosecutor. The complaint provides three examples of such misconduct: [i] the Judge allowed the prosecutor to disregard the Judge’s order for production of certain documents and statements; [ii] the Judge declined to follow an order of the court of appeals (in order to cover up the prosecutor’s withholding of material) directing the district court to allow the Complainant to file a new habeas application; and [iii] the Judge allowed the prosecutor to submit false and fabricated documents.

DISCUSSION

The complaint is dismissed.

The allegations concerning the three examples are somewhat difficult to discern. Nothing on the record suggests that the Judge allowed prosecutors to disregard a production order, declined to follow a court of appeals' order to permit a new habeas motion, or conspired with the prosecution to allow the submission of any false or fabricated documents.

To the extent the first two of these allegations can be understood, they appear to challenge the correctness of various rulings. For example, the complaint alleges that the Complainant brought to the Judge's attention a specific document that purportedly established the Complainant's innocence, and that the prosecution then disregarded the Judge's order for the production of related documents. But the record shows that the Judge denied the Complainant's "motion for Brady violation," so this allegation ultimately challenges the Judge's ruling regarding the prosecution's production of evidence.

Similarly, the record shows that the Judge followed the court of appeals'

directive to permit the filing of a new habeas application, but then denied that habeas application on the merits.

What these two allegations contend is that the Judge got it wrong, not that the Judge 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 of a conspiracy between the Judge and the prosecutor—specifically, that the Judge knowingly allowed the prosecutor to submit false or fabricated documents—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. 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.”).

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