

15-90070-jm
September 29, 2015
Chief Judge

**JUDICIAL COUNCIL OF THE
SECOND CIRCUIT**

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In re
CHARGE OF JUDICIAL MISCONDUCT

Docket No. 15-90070-jm

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ROBERT A. KATZMANN, *Chief Judge*:

On August 21, 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, an attorney proceeding pro se, filed an action in district court alleging due process violations arising out of the collection of child support payments. The Judge dismissed the action. The Judge noted that the Complainant had filed several other matters before the court, and that as an attorney he would not be given the special consideration generally granted to pro

se litigants. The Judge also noted that the Complainant had been warned against pursuing non-meritorious litigation. The Complainant's appeal is pending with the court of appeals.

The misconduct complaint takes issue with the Judge's dismissal of the Complainant's underlying action, as well as the Judge's citation to other matters filed by the Complainant. The complaint explicitly contends that the Judge has violated Rule 3(h)(1), which defines judicial misconduct as conduct prejudicial to the effective and expeditious administration of the business of the courts, and Rule 3(h)(1)(D), which defines judicial misconduct as treating litigants, attorneys, or others in an egregious and hostile manner.

DISCUSSION

The complaint is dismissed.

The complaint correctly acknowledges that a judicial misconduct complaint may not challenge conduct directly related to the merits of a decision or procedural ruling. The complaint contends that it does not challenge the Judge's dismissal of the Complainant's underlying action, but rather challenges the Judge's hostile treatment of the Complainant. However, the allegations of hostility appear entirely derivative of the Judge's rulings in the underlying case.

For example, the complaint contends that the Judge dismissed the action “without even addressing the jurisdiction” argument, thereby demonstrating “animus or hostility.” The complaint similarly opines that the Judge’s certification that any appeal would not be taken in good faith “is further indication of hostility.” These allegations ultimately contend that the Judge got it wrong, not that the Judge engaged in judicial 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.”); *see also 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”). 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.

Moreover, to the extent the allegations of hostile treatment are not entirely derivative of the Judge's rulings, they are wholly unsupported, and would therefore be 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 has pointed to nothing other than the decisions themselves to support these claims of hostile treatment.

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