

15-90065-jm
September 29, 2015
Chief Judge

**JUDICIAL COUNCIL OF THE
SECOND CIRCUIT**

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In re
CHARGE OF JUDICIAL MISCONDUCT

Docket No. 15-90065-jm

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ROBERT A. KATZMANN, *Chief Judge*:

On July 31, 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 a pro se action in district court alleging violations of various state and federal laws based on the ticketing and booting of her car. The case was assigned to the Judge. Five months later, the Complainant filed a notice of voluntary dismissal of the case. The following month, the Judge granted the

request and dismissed the case without prejudice.

The misconduct complaint alleges that the Judge: [i] ignored the Complainant's request for a restraining order; [ii] ignored various documents submitted by the Complainant; and [iii] did "nothing after assigning a case number," amounting to a five-month "neglect and disregard" of the case. The complaint explains that the Complainant voluntarily dismissed the action due to the Judge's failure to act.

DISCUSSION

The complaint is dismissed.

The gravamen of the complaint concerns delay. However, the rules and guidance implementing the Act make clear that an allegation of delay is ordinarily not the proper subject of a judicial misconduct complaint, and should be dismissed as "directly related to the merits of a decision or procedural ruling," absent a supported allegation of improper motive or habitual delay. 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.”).

The complaint could be read to allege an improper motive—i.e., that the Judge is biased against pro se litigants. However, such an allegation is wholly unsupported, and is 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).

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