

16-90086-jm
November 2, 2016
Chief Judge

**JUDICIAL COUNCIL OF THE
SECOND CIRCUIT**

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In re
CHARGE OF JUDICIAL MISCONDUCT

Docket No. 16-90086-jm

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ROBERT A. KATZMANN, *Chief Judge*:

On July 25, 2016, 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

This is the Complainant’s second misconduct complaint against the Judge in the last four years related to the same district court proceeding. The Judge dismissed the Complainant’s employment discrimination action in 2001 for failure to prosecute. In 2003, the court of appeals dismissed the Complainant’s

appeal from that decision as lacking as arguable basis in law or fact. Over the next several years, the Complainant filed numerous motions seeking relief from the judgment and new complaints seeking to relitigate her employment discrimination action, all of which the Judge denied or dismissed. The Judge also denied the Complainant's request for recusal. In 2009, the Judge enjoined the Complainant from filing any further requests for relief in the case or any new related actions. In 2012, the Complainant moved to reopen her case; the Judge terminated her motion based on the filing injunction.

In 2013, the Complainant filed a misconduct complaint against the Judge challenging the imposition of the filing injunction and the dismissal of the employment discrimination action (allegedly as an effort to prevent her former employer "from having to pay the judgment"). The complaint was dismissed as merits related.

In 2014, the Complainant filed a motion in district court arguing that her case was "illegally dismissed." The Judge directed the clerk of court to terminate the motion pursuant to the filing injunction.

The current misconduct complaint repeats allegations raised in the earlier misconduct complaint—namely, that the Judge disregarded the law in dismissing

her employment discrimination action purportedly to prevent her former employer “from having to pay the judgment,” and improperly enjoined her from further filings in the action. The complaint also alleges that the Judge: [i] treated the Complainant in a hostile manner and with a lack of respect; and [ii] denied her request for recusal.

DISCUSSION

The complaint is dismissed.

As with the prior misconduct complaint, this complaint takes issue with the correctness of the Judge’s decisions and official actions in the underlying proceeding, including his dismissal of the action and imposition of the filing injunction. What these allegations contend is that the Judge got it wrong, not that the Judge engaged in judicial misconduct. Accordingly, these allegations are again dismissed as “directly related to the merits of a decision or procedural ruling.” The allegation that the Judge improperly denied the Complainant’s request for recusal is similarly dismissed as merits related. 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, including a failure to recuse, 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 allegation of hostility appears entirely derivative of the merits-related charges, but to the extent the allegation is separate, it 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); *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. Oct. 26, 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.”). A decision for or against a party does not evidence bias or hostility. Nor do several such decisions.

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