

15-90093-jm  
January 21, 2016  
Chief Judge

**JUDICIAL COUNCIL OF THE  
SECOND CIRCUIT**

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In re  
CHARGE OF JUDICIAL MISCONDUCT

Docket No. 15-90093-jm

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ROBERT A. KATZMANN, *Chief Judge*:

On November 24, 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 civil rights action against prison officials alleging inadequate medical treatment. The case was assigned to the Judge. The Judge granted the Complainant's request for leave to proceed without prepayment of fees, dismissed some of his claims, and granted him an

opportunity to file an amended complaint. The Judge ultimately dismissed the Complainant's amended complaint for failure to state a claim. The Complainant did not appeal the decision

The misconduct complaint alleges that the Judge: [i] failed to allow the parties an opportunity to respond before dismissing the complaint; [ii] should have dismissed the claims without prejudice and allowed the Complainant to file another complaint or seek relief in state court; and [iii] demonstrated bias because he failed to provide the Complainant with instructions on how to appeal after dismissing his complaint. The complaint seeks "reinstatement" of the civil rights action and appointment of counsel; or, in the alternative, refund of the filing fee with no further payments required.

## **DISCUSSION**

The complaint is dismissed.

The allegations in the misconduct complaint seek merely to challenge the correctness of the Judge's various decisions and official actions in the underlying proceeding. What these 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 allegation of bias appears entirely derivative of the merits-related charges, but to the extent it is separate, 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). Moreover, Rule 4(a) (Appeal in a Civil Case) of the Federal Rules of Appellate Procedure is attached to the Judgment.

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