

15-90094; 15- 90095; 15-90096
January 11, 2016
Chief Judge

**JUDICIAL COUNCIL OF THE
SECOND CIRCUIT**

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| In re | Docket No. | 15-90094-jm |
| CHARGE OF JUDICIAL MISCONDUCT | | 15-90095-jm |
| | | 15-90096-jm |

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ROBERT A. KATZMANN, *Chief Judge*:

On November 23, 2015, the Complainant filed three complaints 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 three circuit judges of this Circuit (the “Panel”) with misconduct.

BACKGROUND

In 2007, the Complainant filed a pro se medical malpractice action in state court following his wife’s death. After the defendants removed the case to federal court, the Complainant amended his complaint to include references to racial discrimination and intimidation by the state court judge. Before any

dispositive rulings in the district court, the Complainant filed an interlocutory appeal and two mandamus petitions alleging systemic discrimination by the state court judge. The court of appeals construed the appeal as an additional request for mandamus relief, denied the mandamus petitions, and warned the Complainant against future frivolous filings.

The district court dismissed then the action and remanded the remaining state law claims to state court. As to the state court judge, the district court noted that none of the state court judges referenced in the complaint had been named as defendants.

On appeal, the Panel denied the Complainant's motions for transcripts and sanctions against the district court and dismissed the appeal as lacking an arguable basis in law or fact. The Panel noted that the Complainant had been warned in the past against filing "duplicative, vexatious, or frivolous appeals or motions" and reiterated that warning. The Panel denied the Complainant's subsequent motion to reconsider and remand to the district court.

The misconduct complaint alleges that the Panel deprived the Complainant of his right to appeal and erred in finding that any of his filings had been duplicative, vexatious, or frivolous. In addition, as in a prior misconduct

complaint against the district judge, the Complainant alleges that the Panel deprived him of due process and equal protection by failing to address the state court judge's actions and racial bias. He contends that the Panel's actions, like those of the district court, have delayed him from pursuing his case.

DISCUSSION

The complaint is dismissed.

The allegations in the complaint seek merely to challenge the correctness of the Panel's dismissal of the appeal and its decision to issue a warning against frivolous filings. What these allegations contend is that the Panel got it wrong, not that the judges 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 Clerk is directed to transmit copies of this order to the Complainant and to the Panel.