

15-90092-jm
January 11, 2016
Chief Judge

**JUDICIAL COUNCIL OF THE
SECOND CIRCUIT**

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In re
CHARGE OF JUDICIAL MISCONDUCT

Docket No. 15-90092-jm

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ROBERT A. KATZMANN, *Chief Judge*:

On November 17, 2015, the Complainants filed identical 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 a district judge of this Circuit (the "Judge") with misconduct.

BACKGROUND

The Complainants filed an action in December 2013, which was assigned to the Judge. In April 2015, the Judge denied leave to file a settlement agreement under seal and identified options for proceeding, one of which was public filing of a settlement agreement without a confidentiality provision. The parties filed a

revised agreement in May 2015.

In September 2015, the Complainants sent a letter to the Judge urging action on the May 2015 agreement. In November 2015, the Judge provisionally granted settlement, but again instructed the parties to file a revised agreement omitting the confidentiality provision. The revised agreement was filed and so ordered in December 2015. The case is closed.

The misconduct complaints, which were filed the day before the Judge provisionally granted settlement, allege that the Judge delayed review of the settlement agreement and failed to respond to the Complainants' letter request for a ruling on the agreement.

DISCUSSION

The complaints are dismissed.

The gravamen of the complaints 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 therefore be 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)(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 the particular case.”). The complaints contain no allegations of improper motive or habitual delay. Accordingly, the complaints are dismissed as merits-related.

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