

18-90028-jm
June 8, 2018
Chief Judge



**JUDICIAL COUNCIL OF THE
SECOND CIRCUIT**

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In re
CHARGE OF JUDICIAL MISCONDUCT

Docket No. 18-90028-jm

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ROBERT A. KATZMANN, *Chief Judge*:

On March 15, 2018, 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

In January 2017, the Complainant filed a pro se action against two university administrators and a state attorney grievance committee, alleging that the administrators violated the First Amendment by refusing to allow the Complainant to deliver a lecture on his religious beliefs, and that the committee

had wrongfully refused to discipline the university's general counsel. The case was assigned to the Judge, who dismissed it as frivolous. Thereafter, the Complainant sought the Judge's recusal based on the Judge's former membership on the grievance committee. The Judge denied the request for recusal because the Judge had not been affiliated with any state attorney grievance committee for more than fifteen years. The court of appeals affirmed.

The misconduct complaint alleges that the Judge is "deliberately deceiving the federal judiciary of the United States" by "collaborating" with defense counsel, as evidenced by the Judge's dismissal of the complaint one day after defense counsel filed a letter requesting dismissal. According to the misconduct complaint, the Judge could not have known that defense counsel represented the defendants because the defendants had not yet been served. Although defense counsel had filed a notice of appearance and a letter indicating that the defendants had retained him to appear on their behalf, the misconduct complaint alleges that the Judge should not have accepted defense counsel's representation because the defendants themselves had not confirmed the attorney-client relationship in writing.

DISCUSSION

The complaint is dismissed.

The gravamen of the complaint is that the Judge should not have dismissed the lawsuit one day after defense counsel requested the dismissal. But an allegation that a judge, in deciding to dismiss a complaint, failed to consider all arguments or disregarded key facts is merely an attack on the correctness of the decision. In other words, such allegations contend 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.

Similarly, any allegation concerning the failure to recuse is also dismissed as merits related. *See* 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.”).

Finally, to the extent the Complainant alleges bias separate from the merits-based charges because the Judge was "collaborating" with defense counsel, the allegation is wholly unsupported and 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). A decision for or against a party does not evidence bias, nor does a judge commit misconduct by accepting an attorney's representation that he has been retained to represent individuals who have been named in a lawsuit.

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