



1 SECOND CIRCUIT JUDICIAL COUNCIL

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7 IN RE GEORGE SASSOWER

No. 94-8509

8 Before: Newman, Chief Judge, Kearse, Winter, Miner, Altimari, Mahoney,
9 and Walker, Circuit Judges, and Griesa, Platt, Cabranes,
Telesca, McAvoy, and Parker, Chief District Judges.

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11 JON O. NEWMAN, Chief Judge:

12 This opinion and order are issued by the Judicial Council of the
13 Second Circuit, acting pursuant to Rule 19A of the "Rules of the
14 Judicial Council of the Second Circuit Governing Complaints Against
15 Judicial Officers Under 28 U.S.C. § 372(c)." Rule 19A, applicable to
16 complainants who abuse the complaint procedure, authorizes the Council,
17 after affording a complainant an opportunity to respond in writing, to
18 "restrict or impose conditions upon the complainant's use of the
19 complaint procedure."¹

20 ¹Rule 19A provides:

21 Abuse of the Complaint Procedure

22 If a complainant files vexatious, harassing, or
23 scurrilous complaints, or otherwise abuses the complaint
24 procedure, the council, after affording the complainant
25 an opportunity to respond in writing, may restrict or
26 impose conditions upon the complainant's use of the
27 complaint procedure. Any restrictions or conditions
28 imposed upon a complainant shall be reconsidered by the
29 council periodically.
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1 On September 27, 1993, George Sassower was ordered to show cause
2 in a written submission, to be filed within 20 days, why an order
3 should not be entered barring him from filing any subsequent judicial
4 misconduct complaints in this Court or any documents related to such
5 complaints, without first obtaining leave to file. The show cause
6 order was issued in connection with the dismissal of two judicial
7 misconduct complaints filed by George Sassower, Nos. 93-8528, 93-8529.
8 The show cause order was prompted by Sassower's pattern of filing
9 frivolous and vexatious judicial misconduct complaints. Since 1987,
10 including complaints filed since the show cause order, he has filed 16
11 judicial misconduct complaints with the Chief Judge of this Circuit, 15
12 of them since 1990, and 8 of them in 1993 alone. Each complaint acted
13 upon as of the date of the show cause order had been dismissed, in most
14 instances because the allegations were frivolous.

15 Sassower responded on October 14, 1993. The response contends
16 that only a "minimal" number of decisions have been rendered on
17 Sassower's prior judicial misconduct complaints and that there has not
18 been an "undue burden on the court."² Sassower demonstrates no

19 ²The response also endeavors to repeat the contention, advanced by
20 Sassower in prior submissions, that various judges, including the
21 writer, have improperly received representation by the United States in
22 litigation Sassower has brought against various defendants, including
23 judicial officers. He continues to labor under the misguided
24 impression that such representation was improper for lack of a "scope"
25 certification. Under 28 U.S.C. § 2679(d), the Attorney General is
26 authorized to certify that an employee of the United States, sued under
27 certain circumstances, was "acting within the scope of his office or
28 employment at the time of the incident out of which the claim arose,"
29 in which event the United States is substituted as the party defendant.
30 This authority of the Attorney General to substitute the United States

1 awareness of the frivolous and vexatious nature of his prior
2 complaints, a circumstance that indicates the likelihood that such
3 abuse of the complaint procedure will continue unless some protective
4 procedures are instituted.

5 With respect to civil litigation, courts have recognized that
6 the normal opportunity to initiate lawsuits may be limited once a
7 litigant has demonstrated a clear pattern of abusing the litigation
8 process by filing vexatious and frivolous complaints. Among the
9 restrictions imposed have been prohibiting the filing of any matters in
10 a designated category, see, e.g., Villar v. Crowley Maritime Corp., 990
11 F.2d 1489 (5th Cir. 1993), cert. denied, 114 S. Ct. 690 (1994); Demos
12 v. U.S. District Court for the Eastern District of Washington, 925 F.2d
13 1160 (9th Cir.), cert. denied, 498 U.S. 1123 (1991); requiring leave of
14 court for future filings, see, e.g., In re Burnley, 988 F.2d 1 (4th
15 Cir. 1992); Cofield v. Alabama Public Service Commission, 936 F.2d 512
16 (11th Cir. 1991); and limiting in forma pauperis status, see, e.g., In
17 re Sassower, 114 S. Ct. 2 (1993); Demos v. Storrie, 113 S. Ct. 1231
18 (1993). A "leave of court" requirement or other restrictions have been
19 imposed upon Sassower by the Court of Appeals for the Second Circuit,
20 Sassower v. Mahoney, No. 88-6203 (2d Cir. Dec. 3, 1990), the District

21 as a defendant in lieu of an employee has nothing to do with the
22 authority of the United States Department of Justice to conduct
23 litigation in which an officer of the United States is a party. See 28
24 U.S.C. § 516; see also 28 U.S.C. §§ 519, 547. Each Chief Judge,
25 including the writer, has recused himself in all judicial misconduct
26 complaints in which Sassower has alleged improper representation by the
27 Department of Justice in providing representation to a Chief Judge.

1 Court for the Eastern District of New York, In re Sassower, 700 F.
2 Supp. 100 (E.D.N.Y. 1988), and the District Court for the Southern
3 District of New York, United States f/b/o Sassower v. Sapir, 87 Civ.
4 7135 (S.D.N.Y. Nov. 18, 1987); Raffe v. Doe, 619 F. Supp. 891 (S.D.N.Y.
5 1985); see also In re Martin-Trigona, 9 F.3d 226 (2d Cir. 1993)
6 (explaining "leave of court" procedures applicable to Sassower and
7 another sanctioned litigant in the Court of Appeals).

8 In other circuits, restrictions have also been imposed with
9 respect to initiation of judicial misconduct complaints pursuant to 28
10 U.S.C. § 372(c). In the First Circuit, an order has been entered by
11 the Judicial Council directing that complaints filed by a vexatious
12 complainant, if found by the Chief Judge to be repetitious of earlier
13 filings or to request relief clearly outside of the ambit of 28 U.S.C.
14 § 372(c), will not be processed as judicial misconduct complaints
15 unless the Chief Judge so directs. In re Rudnicki, 1st Cir. Judicial
16 Council, Nov. 4, 1985. In the Third Circuit, an order has been entered
17 by the Judicial Council prohibiting a vexatious complainant from filing
18 repetitive and frivolous judicial misconduct complaints. In re Silo,
19 3d Cir. Judicial Council, May 4, 1984. In the Fifth Circuit, an order
20 has been entered by a circuit judge prohibiting a vexatious complainant
21 from filing further judicial misconduct complaints without permission
22 to file having been obtained from a member of the Judicial Council. In
23 re McAfee, Order of Judge Gee, 5th Cir., Nov. 20, 1990.

24 We conclude that, just as those who abuse the normal processes
25 of litigation may be restricted in their opportunity to initiate new

1 lawsuits, those who abuse the judicial misconduct complaint procedure
2 may also be restricted in their opportunity to initiate new misconduct
3 complaints. We also conclude that a "leave to file" requirement,
4 foreclosing the filing and normal processing of a misconduct complaint
5 unless leave to file has first been obtained from the Chief Judge, is
6 the appropriate first level of sanction to be imposed on a person who
7 abuses the misconduct procedure by filing a series of frivolous and
8 vexatious complaints. The integrity of the misconduct complaint
9 procedure, a matter of importance to all persons with a legitimate
10 basis for making a complaint within the scope of 28 U.S.C. § 372(c),
11 will best be maintained by imposing a "leave to file" restriction on
12 those who abuse this procedure.

13 We also conclude that the pattern of frivolous and vexatious
14 misconduct complaints filed by Sassower merits the imposition of a
15 "leave to file" requirement upon him. Not only have his complaints
16 been regularly dismissed as frivolous or plainly related to the merits
17 of litigation, but he has also pursued the technique of other vexatious
18 litigants of launching new complaints against judicial officers for
19 their actions in dismissing his prior complaints. Sassower employed
20 that tactic against two former Chief Judges of this Circuit. Moreover,
21 prior dismissal orders have repeatedly included warnings that filing
22 additional frivolous misconduct complaints risked the imposition of
23 restrictions.

24 Accordingly, it is hereby Ordered that George Sassower shall not
25 file any subsequent judicial misconduct complaints in this Court or any