

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT
UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK 10007

ELAINE B. GOLDSMITH
CLERK

(212) 791-0103

December 10, 1990

Mr. George Sassower
16 Lake Street
White Plains, New York 10603

Re: Judicial Conduct Complaints
Nos. 90-8557, 90-8560, 90-8562

Dear Mr. Sassower:

Enclosed please copies of the orders dismissing your judicial conduct complaints. Pursuant to Rule 5 of the Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 U.S.C. § 372(c) you have the right to petition the judicial council for review of these decisions. A petition for review must be received in the clerk's office within 30 days of the date of this letter to be considered timely. Please note, it is not necessary to enclose copies of the original complaints. In addition, you must submit a separate petition for review for each complaint filed.

Sincerely,

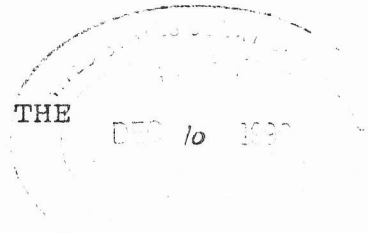
Elaine B. Goldsmith, Clerk
By



Tina Eve Brier
Chief Deputy Clerk

Enclosure

JUDICIAL COUNCIL OF THE
SECOND CIRCUIT



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In re

CHARGE OF JUDICIAL MISCONDUCT

90-8557

90-8562

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THOMAS J. MESKILL, Acting Chief Judge:

On October 10 and October 29, 1990, complainant filed complaints with the Clerk's Office pursuant to 28 U.S.C. § 372(c) and Rule 2 of the Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers (the Local Rules), charging a district court judge of this circuit (Judge A) with misconduct. In addition to the two instant complaints, on October 10, 1990, complainant filed a complaint against a circuit judge which was dismissed on October 23, 1990. On October 29, 1990, complainant also filed two more complaints, one against a circuit judge of this circuit and another against a district court judge of this circuit.¹

Complainant is a disbarred attorney and frequent litigant who was enjoined from filing further lawsuits without leave of court in the United States Court of Appeals for the Second Circuit and in two district courts in this

¹ Additionally, in 1987, complainant filed a complaint charging three circuit court judges and a district court judge of this circuit with misconduct, pursuant to 28 U.S.C. § 372(c) and former Rule § 0.24 of the Local Rules. We dismissed that complaint on April 16, 1987.

circuit.

Complainant alleges that Judge A "constitutes a clear and present danger to the administration of justice and his conduct will certainly bring the circuit into disrepute unless decisive action is taken." Complainant defines the "clear and present danger" as "each and every judge, as far as is know to complainant, consider[ing Judge A's] actions to be unlawful, but nevertheless ... follow[ing] such directions."

Complainant accuses Judge A of engaging in "'fixing' practices" in November and December 1987. Specifically, complainant alleges that at that time another district court judge (Judge B) sought to have a matter before him reassigned. According to complainant, rather than reassigning the matter by random selection, Judge A "without any 'due process'... seized upon the occasion to dismiss" complainant's lawsuit which was never before him, thereby intruding "into the 'decisional process' of [Judge B] ... [and] punishing the victim, rather than the culprit." Complainant further asserts that Judge A erroneously stated that complainant had made Judge B a defendant with "'the effect, and probably the purpose of disrupting the orderly judicial decisional process of the district court,'" and imposed filing restrictions on complainant in the district court without due process of law. Complainant further contends that one day later Judge A entered a similar order

with respect to the district's bankruptcy court.

Complainant also accuses Judge A of interfering with the "'orderly judicial decisional process' ... in order to advance a criminal racketeering adventure," on the basis of an October 1990 order granting complainant leave to file a petition in bankruptcy, to be assigned by random selection to any judge whose duty station is the principal bankruptcy court location, rather than a satellite location near complainant's residence.

Finally, complainant accuses Judge A of barring complainant's entry into a federal building that houses a satellite of the district court "'unless and until his [complainant's] presence is actually required.'" Complainant implies that such order is further evidence of misconduct.

In a December 10, 1987 order, Judge A observed that complainant's lawsuit which was pending before Judge B was barred by filing restrictions that were set forth in a 1985 order by a third judge, and ordered that the case be dismissed without prejudice and without costs. On December 11, 1990, Judge A denied as moot complainant's request for leave to appeal a bankruptcy court order. Citing the December 10, 1987 order, Judge A also directed that no further papers be filed under that docket number, except a Notice of Appeal, without leave of court. Complainant's assertion that Judge A is a "clear and present danger" and will bring the circuit into disrepute because other judges

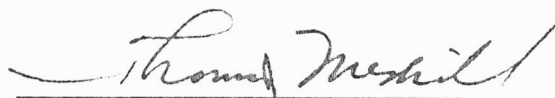
follow Judge A's "unlawful" direction, notwithstanding their disagreement with it, appears to be related to the enforcement of the injunction. This assertion is related to the merits of a judicial determination. The Judicial Councils Reform and Judicial Conduct and Disability Act (the Act), 28 U.S.C. § 372(c), does not apply to matters "directly related to the merits of a decision or procedural ruling," 28 U.S.C. § 372(c)(3)(A)(ii). If what is sought is appropriately obtained by normal adjudication rather than by a misconduct complaint, such a matter is "related to the merits" within the meaning of § 372(c)(3)(A)(ii), whether or not it has already been the subject of a judicial ruling. See In re Charge of Judicial Misconduct, 685 F.2d 1226 (9th Cir. 1982). Accordingly, this portion of the complaint is hereby dismissed as related to the merits and as frivolous, pursuant to 28 U.S.C. § 372(c)(3)(A)(ii) and (iii) and Rule 4(c)(2) and (3) of the Local Rules.

Complainant relies on a judicial order granting leave to file a petition in bankruptcy to support his assertion that Judge A is engaged in criminal activity. Further, complainant's assertion that the order limiting complainant's physical access to the courthouse amounts to judicial misconduct is unsupported, and raises a matter subject to ordinary judicial proceedings, such as by filing a writ of mandamus. These portions of the complaint are dismissed as related to the merits and frivolous, pursuant to

28 U.S.C. § 372(c)(3)(A)(ii) and (iii) and Rule 4(c)(2) and (3) of the Local Rules.

As noted above, complainant is no stranger to the judicial system or to the procedure for filing complaints against judicial officers pursuant to the Act. With the filing of the instant complaints as well as his three other complaints, complainant has once again demonstrated his propensity to abuse the judicial process. Based on complainant's history of frivolous and needlessly burdensome filings which unnecessarily tax the resources of the Court, complainant is advised that further abuse of the Act will not be tolerated and may result in the imposition of sanctions including, but not limited to, filing restrictions pursuant to Rule 19A of the Local Rules.

The Clerk is directed to transmit copies of this order to the complainant and to Judge A, who is the subject of the complaint.


Thomas J. Meskill
Acting Chief Judge

Dated: New York, NY
December 10, 1990