

JUDICIAL COUNCIL OF THE
SECOND CIRCUIT

-----x UNITED STATES COURT OF APPEALS
FILED - SEP. 9, 1993
In re ELAINE GOLDSMITH, CLERK
CHARGE OF JUDICIAL MISCONDUCT SECOND CIRCUIT
93-8527
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RALPH K. WINTER, Acting Chief Judge:

On July 29, 1993, complainant filed a complaint with the Clerk's Office pursuant to the Judicial Councils Reform and Judicial Conduct and Disability Act, 28 U.S.C. §372(c) (the Act), and the Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers (the Local Rules) charging a circuit court judge of this Circuit with misconduct. This is complainant's ninth complaint of misconduct against a judicial officer of this Circuit.¹ All of complainant's previous complaints against judicial officers have been dismissed.

Background:

Complainant is a disbarred attorney and frequent litigant who is required to obtain leave of court before filing documents in the United States Court of Appeals for the Second Circuit and in the United States District Courts for the Southern and Eastern Districts of New York.

Complainant became a litigant before the United

¹ On July 29, 1993, complainant also filed complaints 93-8528 and 93-8529 which are discussed in a separate order.

States District Court for the Southern District of New York, without obtaining leave, by filing two lawsuits in the Supreme Court for the State of New York against multiple defendants, including many judges of the United States Court of Appeals for the Second Circuit and the United States District Court for the Southern District of New York. The cases were removed to the United States District Court on motions by the United States Attorney on behalf of the federal defendants. They are currently pending.

Allegations:

Complainant asserts that in one of the cases pending before the district court the judge made certain admissions which are evidence of judicial misconduct. These "admissions" were made when the judge failed to controvert statements by complainant that accompanied complainant's motion for summary judgment and that, pursuant to the district court's local rules, are deemed admitted by the opposing party.

Complainant alleges that in an order entered in a case brought by complainant's daughter and ex-wife, the judge made statements concerning complainant that were "defamatory and constitutional [sic] injurious" to complainant and contrary to "fundamental ethics and fairness" because complainant "was not afforded an opportunity to controvert" them. Complainant claims that such statements "reveal[] a manifest lack of basic ethics on the part of" the judge and challenges the judge to substantiate the statements.

Complainant also asserts that the judge had no jurisdiction over complainant in these proceedings and that any statements the judge made about complainant were therefore not made in a judicial capacity.

Complainant asserts that the judge, either alone or with others, is engaged in criminal racketeering activities, "larceny of judicial trust assets, the diversion of monies payable `to the federal courts' to private pockets, extortion, defrauding the federal government by federal representation, at federal cost and expense, and ... attempting to conceal and advance such criminal activities, by labelling [complainant's] charges as `frivolous.'"

Finally, complainant alleges that complainant's convictions for criminal contempt and disbarment from the practice of law suffer from constitutional and jurisdictional infirmities and that his disbarment was unlawful.

Discussion:

Complainant's allegations that the judge admitted certain conduct by failing to respond to complainant's motion ignores the presiding district court judge's orders that defendants are not required to respond to any motions or discovery requests in the pending litigation until defendants' motions to dismiss have been decided. The presiding judge most recently reiterated this direction in an order dated May 20, 1993. Accordingly, complainant's assertion that the judges complained against have admitted certain matter is

unsupported. Furthermore, the allegations are the subject of litigation before the district court and are therefore directly related to the merits of those proceedings.

Accordingly, these portions of the complaints are here hereby dismissed as frivolous and directly related to the merits, pursuant to 28 U.S.C. §372(c)(3)(A)(iii) and (ii) and Rule 4(c)(3) and (2) of the Local Rules.

To the extent complainant asserts that statements in the judge's decision were defamatory, injurious or unfair, and were not made in the judge's judicial capacity, complainant is mistaken. Although not expressly stated, the judge merely took judicial notice of findings in other proceedings. Nor do the judge's statements provide evidence of unethical behavior. To the extent complainant accuses the judge of criminal activity, complainant provides no evidence to substantiate his claims other than the allegations made in the district court and judicial findings that complainant has filed frivolous litigation. Those portions of the complainant has filed frivolous dismissed as directly related to the merits of the proceedings 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's allegations related to his convictions for criminal contempt and his disbarment from the practice of law are directly related to the merits of those proceedings. These portions of the complaint are hereby dismissed pursuant to 28 U.S.C. §372(C)(3)(A)(ii) and Rule 4(c)(2) of the Local

Rules.

The complaint is hereby dismissed in its entirety. The Clerk is directed to transmit copies of this order to the complainant and to the judge who is the subject of the complaint.

Complainant is cautioned that further submission of insubstantial misconduct complaints will jeopardize his entitlement to use the misconduct complaint procedure.

RALPH K. WINTER
Acting Chief Judge

Signed: New York, New York
September 3, 1993