Herbert CLOUDEN, Plaintiff,
v.
Hal LIEBERMAN, Chief Counsel, Departmental Disciplinary Committee, Supreme Court of the State of New York, Appellate Division, First Judicial Department, Defendant.

No. 92 CIV. 139.

United States District Court, E.D. New York.

March 5, 1992.

Herbert Clouden, pro se.

Robert Abrams, Attorney General of the State of New York, New York City by Carolyn Cairns Olson, Assistant Attorney General, for defendant.

Memorandum and Order

WEINSTEIN, District Judge:

*1 This is an action pursuant to 42 U.S.C. § 1983 against the Chief Counsel of the Disciplinary Committee of the First Department. It seeks to compel the Chief Counsel to investigate plaintiff's charge that his defense counsel at a prior criminal trial failed to properly defend him. The complaint states:

I want a "full-scale" investigation into this matter. I want an injunctive order issued, so I can appeal my conviction on the grounds of incompetent counsel.

In his most recent communication, dated February 14, 1992, plaintiff requested appointment of counsel. There is no reason to designate counsel because the case must be dismissed.

The defendant resides in New York County, which is also his place of business. Plaintiff resides at Arthur Kill Correctional Facility in Staten Island. There is no indication in the papers of where the criminal proceeding or consultation between counsel and client took place, but we can assume for purposes of this motion that a substantial portion of the relevant activities took place in the Eastern District of New York.

Defendant moves to dismiss on the ground of improper venue or to transfer to the Southern District of New York. Venue is proper in this district under 28 U.S.C. § 1391(b)(2), although the case could be transferred to the Southern District pursuant to 28 U.S.C. 1404(a).

A transfer is undesirable since there is no merit to the case. The Chief Counsel is in the same position as a public prosecutor required to exercise "independence of judgment" in deciding how to use the limited resources of the office. Imbler v. Pachtman, 424 U.S. 409, 423 (1976). Prosecutors and those holding equivalent office are immune from suits seeking to force official action. See Wayte v. United States, 470 U.S. 598, 607 (1985); DeJose v. New York State Department of State, No. 89-3761, 1990 WL 59,565, at *2 (E.D.N.Y. April 26, 1990) (Raggi, J.), aff'd, 923 F.2d 845 (2d Cir.1990), cert. denied, 111 S.Ct. 2024 (1991). In any event, relief from a state criminal conviction cannot be obtained by an indirect collateral attack on the effectiveness of counsel through a disciplinary hearing.

The case must be and is dismissed. Notify all parties.

So ordered.