

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
United States Courthouse
40 Foley Square - Room 1702
New York, N.Y. 10007

Roseann B. MacKechnie
Clerk

October 12, 2000

Mr. Gilbert Lau
207 East 85th Street
New York, New York 10028

RE: Judicial Conduct Complaint
No. 00-8541

Dear Mr. Lau:

Enclosed please find a copy of the order dismissing your judicial conduct complaint. Pursuant to Rule 5 of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 USC § 372(c), you have the right to petition the judicial council for review of this decision. 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 a copy of the original complaint.

Sincerely,

Roseann B. MacKechnie, Clerk

By:



Bernard F. Madsen Jr.
Deputy Clerk

(*) ANY PETITION FOR REVIEW SUBMITTED MUST BE RECEIVED NO LATER THEN MONDAY, NOVEMBER 13th, 2000.

Enclosure

JUDICIAL COUNCIL OF THE
SECOND CIRCUIT



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In re

CHARGE OF JUDICIAL MISCONDUCT

No. 00-8541

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RALPH K. WINTER, Chief Judge:

On July 19, 2000, the Complainant filed a complaint with the Second Circuit 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 district court judge of this Circuit (the "Judge") with misconduct.

Background and Allegations

The Complainant filed a civil action in district court which was dismissed by the Judge pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) & (iii). According to the Complainant, the Judge improperly characterized the case as frivolous and vexatious, threatened the Complainant with fines, costs and jail for contempt, and stated that he had no right to sue the defendants named in the action. The Complainant also states that the Judge was biased against him.

A transcript attached to the instant complaint indicates that, in addition to dismissing the action under § 1915(e), the Judge

sanctioned the Complainant by entering an injunction requiring that he first obtain the approval of a magistrate judge prior to filing any future action concerning the subject matter of the action. The Judge explained that failure to comply with the injunction could be punished by imposition of a fine or jail term, or reimbursement of the expenses of persons affected by his litigation. The Judge indicated that the Complainant could appeal the order of dismissal to the Court of Appeals. Such an appeal has been taken.

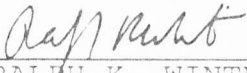
Disposition

The Complainant's allegations primarily challenge the merits of the Judge's decision dismissing the action and enjoining certain future conduct. Direct challenges to the merits of a decision or procedural ruling in a court proceeding, however, may not be brought under Section 372. See 28 U.S.C. § 372(c)(3)(A)(ii); Local Rule 4(c)(2); see also Local Rule 1(b) (providing that Section 372 does not cover "wrong decisions -- even very wrong decisions -- in the course of hearings, trials, or appeals"). Such challenges must be pursued through normal appellate procedures. See Local Rule 1(e) ("The complaint procedure is not intended to provide a means of obtaining review of a judge's or magistrate judge's decision or ruling in a case. The judicial council of the circuit . . . does not have the power to change a decision or ruling. Only a court can do that."). The complaint is therefore dismissed.

With regard to the Judge's alleged bias, the Complainant's allegation is far too conclusory to permit review under Section

372. Allegations of misconduct must be supported by specific allegations of fact; the complaint must make clear what specific conduct the judge engaged in and why that conduct was improper. Broad and conclusory allegations of misconduct are insufficient. Because the allegation of bias is entirely unsupported, it must be dismissed as frivolous within the meaning of 28 U.S.C. § 372(c)(3)(A)(iii) and Local Rule 4(c)(3) (providing that "wholly unsupported" charges may be dismissed as "frivolous").

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



RALPH K. WINTER
Chief Judge

Signed: New York, New York
September 29, 2000