

2/25/98
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
UNITED STATES COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

GEORGE LANGE III
CLERK

DATE: February 23, 1998

Doris L. Sassower
283 Soundview Ave.
White Plains, NY 10606

Re: Judicial Conduct Complaints
Docket Nos. 97-8535, 97-8539, 97-8540, 97-8541

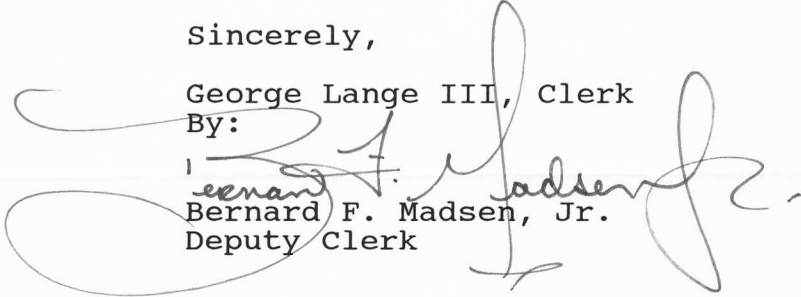
Dear Ms. Sassower:

Enclosed please find a copy of the order dismissing your four (4) judicial conduct complaints. Pursuant to Rule 5 of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 U.S.C. Section 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,

George Lange III, Clerk
By:

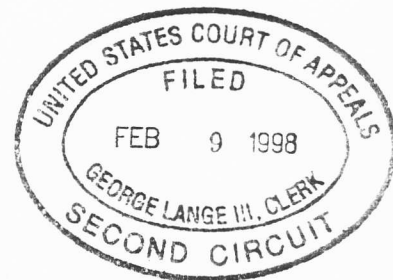

Bernard F. Madsen, Jr.
Deputy Clerk

Enclosure

(*) ANY PETITION FOR REVIEW SUBMITTED MUST BE RECEIVED NO LATER THAN
MARCH 25th, 1998.

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JUDICIAL COUNCIL OF THE
SECOND CIRCUIT



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In re

CHARGE OF JUDICIAL MISCONDUCT

97-8535, -8539,
-8540, -8541

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RALPH K. WINTER, Chief Judge:

On October 29 and November 28, 1997, Complainant filed four complaints 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 Judges of this Circuit with misconduct. The subject of complaint 97-8535 is a District Court Judge (Judge A); the subjects of complaints 97-8539, 97-8540, and 97-8541, are two Circuit Court Judges (Judges B and C) and a District Court Judge (Judge D), who were members of an appellate panel.

Background:

Complainant's license to practice law was suspended in 1991. In 1994, following unsuccessful state court challenges to the suspension, Complainant filed a federal lawsuit pursuant to 42 U.S.C. § 1983 charging state court judges, disciplinary committee members, and others with civil rights violations. Complainant also asserted a state law claim for intentional infliction of emotional

distress. In May 1996, Judge A granted summary judgment dismissing the federal claims and declined to exercise jurisdiction over the state law claim. That ruling was affirmed in September 1997 by a panel, comprised of Judges B, C and D, of the Court of Appeals for the Second Circuit.

Allegations:

With respect to the district court proceedings, Complainant accuses Judge A of issuing a "knowingly false, fabricated, and fraudulent decision of dismissal" and of "wilfully fail[ing] to adjudicate" her applications for sanctions. The complaint also accuses Judge A of "pervasive bias" and "flagrant dishonesty" in denying Complainant's recusal motion and her motion to reargue the dismissal. The complaint further contends that Judge A violated canons of judicial ethics by failing "to take corrective steps in the face of misconduct" by the judges and attorneys who are the defendants in Complainant's federal lawsuit.

In the misconduct charges against the appellate panel, Judges B, C, and D, Complainant seeks to incorporate by reference hundreds of pages of material from the underlying suit. The complaints themselves, after reiterating the allegations against Judge A and the charges against state judges and others, accuse the panel members of bias. They assert that Judge C "cut [Complainant] off, mid-sentence" at oral argument, and contend that the panel issued a "knowingly false and fraudulent not-for-publication, no-

citation Summary Order" in order to retaliate for the "judicial whistle-blowing advocacy" of Complainant and others in her family. The complaints also allege violations of canons of judicial ethics by Judges B, C, and D because of their failure to take action against the judicial officers named as defendants in the underlying suit.

Disposition:

The allegations of misconduct in these complaints are rooted in judicial rulings. Apart from one assertion that Judge C cut off Complainant at oral argument -- an act that is often required to curtail loquacity and that, without more, does not constitute judicial misconduct -- the alleged infirmities of the rulings are the only "evidence" cited in support of the sweeping charges. Fundamentally, Complainant's argument is that Judge A's rulings, and the affirmance by Judges B, C, and D, were so egregiously wrong that they could only have resulted from bias and deliberate wrongdoing.

Complainant, an experienced litigant, knows that the Act is not a mechanism for reviewing the merits of judicial determinations. She argues, however, that these complaints do not seek a merits review because the Judges did not address the "merits." As Complainant puts it, the alleged misconduct, "although arising from a litigation and encompassing a judicial decision and rulings, is


not 'merits-related' because no adjudications were rendered 'on the merits'."

That position does not withstand scrutiny. Although Complainant contends that the outcomes are indefensible, there is no question that the rulings of Judge A, together with the affirmance by Judges B, C, and D, represent decisions about the merits of Complainant's lawsuit. Moreover, all of the alleged misconduct -- including the claims that facts were intentionally omitted and misrepresented and that the Judges did not comply with canons of judicial ethics -- is intertwined with the substance of those rulings. What Complainant seeks, but what the Act does not provide, is a review of the merits of those decisions. The "compelling policy" underlying the "statutory directive for dismissal of complaints of judicial misconduct which in substance are simply objections to substantive or procedural error," In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Coun. 1982), is applicable here:

To determine whether a judge's rulings were so legally indefensible as to mandate intervention would require the same type of legal analysis as is afforded on appeal. More important, the gravamen of the complaint is not the fitness of the judge, but the merit of his decision. Disciplinary procedures must not be used to correct judicial mistakes.

Id.; see also Green v. Seymour, 59 F.3d 1073, 1077-78 (10th Cir. 1995). The Complaints are dismissed as directly related to the merits, pursuant to 28 U.S.C. § 372(c) (3) (A) (ii) and Rule 4(c) (2) of the Local Rules.

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



RALPH K. WINTER
Chief Judge

Signed: New York, New York
February 9, 1998