

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

rec'd 4/15/96

GEORGE LANGE III
CLERK

DATE: April 11, 1996

Elena Ruth Sassower
16 Lake Street - Apt. 2C
White Plains, N.Y. 10603

and

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

Re: Judicial Conduct Complaint
Docket No. 96-8511

Dear Ms. Elena R. and Ms. Doris L. Sassower:

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 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 enclosed a copy of the original complaint.

Sincerely,

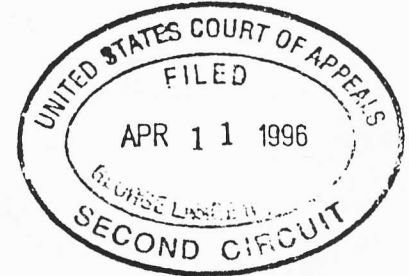
George Lange III, Clerk

By:


Bernard F. Madsen, Jr.
Deputy Clerk

Enclosure

JUDICIAL COUNCIL OF THE
SECOND CIRCUIT



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In re

CHARGE OF JUDICIAL MISCONDUCT

96-8511

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AMALYA L. KEARSE, Acting Chief Judge:

On March 4, 1996, two Complainants filed the above-captioned 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 (the Judge) with misconduct.

Background:

The Complainants, A and B, are a parent and adult child who describe themselves as "immediate family of a judicial whistleblower." Complainant A, the parent, is an attorney. In 1988, Complainants filed a lawsuit alleging housing discrimination. Eventually, the case was tried before a jury for seven days and the jury rejected all of their claims. After the trial, the district judge entered a supplemental judgment imposing sanctions upon Complainants for the vexatious conduct of litigation.

Complainants appealed to the Court of Appeals for the Second Circuit. The Judge presided at the oral argument and authored the panel's unanimous decision, which affirmed the imposition of sanctions against both Complainants and the amount of the sanction imposed upon Complainant A. The Court remanded with respect to Complainant B, however, because it determined that the amount of the sanction imposed "must be reconsidered in light of [Complainant B's] limited resources." Complainants unsuccessfully sought further review. In August 1992, the Second Circuit denied their petition for a rehearing in banc, and in April and June, 1993, the United States Supreme Court denied Complainants' petition for a writ of certiorari and petition for rehearing.

Allegations

Complainants accuse the Judge of "corruptly" using his position as presiding judge for "ulterior, retaliatory purposes." They contend that he knowingly authored a false decision "for the sole purpose of defaming and financially injuring the [Complainants], who were the immediate family of a judicial 'whistle-blower'." They claim that the Judge is biased against their family member for making "fiercely antagonistic" charges against the judiciary and that the alleged bias determined the ruling in their case. The Judge, they say, was "plainly bent on causing financial injury" to Complainants.

They insist that the decision is contrary to "dispositive" facts and controlling law and attribute the result to the Judge's "unabashed retaliation and lawlessness."

Complainants also accuse the Judge of writing a "malicious" decision that seeks to portray Complainant A as a "notorious 'public enemy'." This accusation stems from the opinion's citation to a newspaper article with a headline about a sanctioned attorney. Complainants claim the citation was unnecessary and was included to create the false impression that Complainant A was the subject of the article. Complainants also speculate that the Judge was "involved" behind-the-scenes in an order issued by the district court suspending Complainant A from practice before that court.

Complainants blame the denial of their petition for rehearing "en banc" (sic) on the Second Circuit's "animus" against their family member. They accuse all of the Circuit Judges here of complicity in the Judge's "palpably retaliatory decision" and assert that their judicial bias complaint must be transferred to another Circuit.

Disposition

Complainants' allegations of corruption, retaliation and personal bias are based entirely on Complainants' dissatisfaction with the results of their appeal and their lack of success in the Second

Circuit and the United States Supreme Court. Their charges of bias or prejudice are unsupported and rest solely on decisions on the merits. The Act 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), and may not be used to obtain relief available through normal adjudication. Duckworth v. Dep't of Navy, 974 F.2d 1140, 1141 (9th Cir. 1992); In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. 1982). Moreover, the allegation that the Judge was bent on "causing financial injury" to Complainants is refuted by the decision, which expressly stated that "the amount of the sanction imposed on [Complainant B] must be reconsidered in light of her limited resources." Accordingly, these portions of the Complaints are dismissed as unsupported and as directly related to the merits, pursuant to 28 U.S.C. § 372(c)(3)(A)(ii) and (iii) and Local Rule 4(c)(2) and (3).


Similarly, Complainants' contention that the Judge's decision was "malicious" in citing an article that they deem irrelevant but provocatively-titled, takes issues with the content of a judicial decision and, in addition, is unsupported. The newspaper article does address Complainant A -- specifically, A's unsuccessful appeal of a suspension from practice; although not the lead item, the case is noted in a "box" beneath the headline and is treated in the text of the article. Since the appeal focussed on sanctions for

Complainants' litigation conduct, the Judge (and the panel) determined to mention Complainant A's status in the opinion. The Act does not provide a vehicle for disputing that merits-related decision. Accordingly, these portions of the complaint are dismissed as directly related to the merits and as otherwise unsupported, pursuant to 28 U.S.C. § 372(c)(3)(A)(ii) and (iii) and Local Rule 4(c)(2) and (3).

The speculation by Complainants that the Judge had a role in Complainant A's suspension from practice by the district court is completely baseless. As a routine matter, the district court issues reciprocal disciplinary orders based on disciplinary orders of the state court and determines whether to credit objections interposed by the affected attorneys. This portion of the complaint is dismissed as frivolous, pursuant to 28 U.S.C. § 372(c)(3)(A)(iii) and Local Rule 4(c)(3).

Complainants' unfounded assertion of bias on the part of all of the judges in the Circuit stems from the rejection of their in banc petition and is therefore dismissed as merits-related, pursuant 28 U.S.C. § 372(c)(3)(A)(11) and Local Rule 4(c)(2). The Act does not provide for transfer of a bias complaint to another circuit.

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



AMALYA L. KEARSE
Acting Chief Judge

Signed: New York, New York
April 11, 1996