man. "Consent" in *Bateman* was required by state law to give the mechanic's lien priority over the mortgagee's lien. *Bateman*, 970 F.2d at 927–29. We held there that the mortgagee's "consent" did not amount to an "agreement" for purposes of section 1823(e). *Id.* Here, the state law mechanism whereby the certificate of deposit was created, assigned to the Commissioner, and further protected from levying by creditors is similar to the state mechanic's lien system in *Bateman.* Thus, for quite similar practical and conceptual reasons, we reach a similar result.

[11] As a final argument urging a contrary result, the FDIC relies heavily on language on the reverse side of the certificate of deposit itself, which states that the proceeds of the certificate may be applied against the named obligee's outstanding indebtedness. The rationale behind this argument appears to be that this language warned the Commissioner that Girod had a right, upon maturity of the certificate, to credit the certificate of deposit against outstanding indebtedness on a bank asset, and that therefore the Commissioner, though still an *obligee* of the bank, should have sought written board approval of the assignment, much as a *D'Oench*-wary obligor would. Again, we disagree.

First, the certificate of deposit was, by its terms, assignable.[8] Second, the FDIC's argument places depositors and their assignees essentially in the same position as borrowers, requiring that they guard against purely contingent (and in this case, contractually and statutorily forbidden) bookkeeping maneuvers on the part of the failed bank. Moreover, in this case, such an expansive reading of the dual doctrines would penalize rather than reward, a depositor who, unlike most other depositors, took steps to preserve and memorialize his rights. We decline to adopt such a novel and onerous reading of the relevant law.

We reemphasize that this case does not involve an effort by a borrower who, having promised his bank deposits as security for a loan, later attempts to destroy that security by asserting an oral promise by the bank to release that security notwithstanding the prior written commitment. Here, the borrower did not promise the certificate of deposit as security for its loan and, indeed, did not even own the certificate of deposit at the time it borrowed the money from the bank, for it had previously assigned the certificate of deposit to the Commissioner. Moreover, the borrower in this case, namely Guaranty, is not claiming any rights at all to the funds at issue. Rather, the sole issue before us is whether section 1823(e) applies to bar the Commissioner's claims, and we conclude that it does not.

III.

CONCLUSION

For the foregoing reasons, the order of the district court entering summary judgment in favor of the FDIC based upon the application of 12 U.S.C. § 1823(e) is

Reversed and remanded for further proceedings consistent with this opinion.

8. Language on the reverse side of the certificate of deposit stated:

The assignment of this Certificate to a third party will not be considered valid until said transaction has been notified to, and accepted by the bank.

In re George SASSOWER.

No. 94–8509.

Judicial Council of the Second Circuit.

March 10, 1994.

Following issuance of order to show cause, the Judicial Council of the Second Circuit, Jon O. Newman, Chief Judge, held that pattern of frivolous and vexatious judicial misconduct complaints filed by litigant merited imposition of requirement that he obtain leave from Chief Judge before filing new judicial misconduct complaints.

So ordered.

1. Judges ⇐11(5.1)

Those who abuse judicial misconduct complaint procedure may be restricted in their opportunity to initiate new misconduct complaints. 28 U.S.C.A. § 372(c).

2. Judges ⇐11(5.1)

"Leave to file" requirement, foreclosing filing and normal processing of judicial misconduct complaint unless leave to file has first been obtained from Chief Judge, is appropriate first level of sanction to be imposed on person who abuses misconduct procedure by filing series of frivolous and vexatious complaints. 28 U.S.C.A. § 372(c).

3. Injunction ⇐28

Pattern of frivolous and vexatious judicial misconduct complaints filed by litigant merited imposition of requirement that he obtain leave from Chief Judge before filing new judicial misconduct complaints. 28 U.S.C.A. § 372(c).

Before: NEWMAN, Chief Judge, KEARSE, WINTER, MINER, ALTIMARI, MAHONEY, and WALKER, Circuit Judges, and GRIESA, PLATT, CABRANES, TELESCA, McAVOY, and PARKER, Chief District Judges.

JON O. NEWMAN, Chief Judge:

This opinion and order are issued by the Judicial Council of the Second Circuit, acting pursuant to Rule 19A of the "Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 U.S.C. § 372(c)." Rule 19A, applicable to complainants who abuse the complaint procedure, authorizes the Council, after affording a complainant an opportunity to respond in writing, to "restrict or impose conditions upon the complainant's use of the complaint procedure."[1]

On September 27, 1993, George Sassower was ordered to show cause in a written submission, to be filed within 20 days, why an order should not be entered barring him from filing any subsequent judicial misconduct complaints in this Court or any documents related to such complaints, without first obtaining leave to file. The show cause order was issued in connection with the dismissal of two judicial misconduct complaints filed by George Sassower, Nos. 93–8528, 93–8529. The show cause order was prompted by Sassower's pattern of filing frivolous and vexatious judicial misconduct complaints. Since 1987, including complaints filed since the show cause order, he has filed 16 judicial misconduct complaints with the Chief Judge of this Circuit, 15 of them since 1990, and 8 of them in 1993 alone. Each complaint acted upon as of the date of the show cause order had been dismissed, in most instances because the allegations were frivolous.

Sassower responded on October 14, 1993. The response contends that only a "minimal" number of decisions have been rendered on Sassower's prior judicial misconduct complaints and that there has not been an "undue burden on the court."[2] Sassower dem-

1. Rule 19A provides:

Abuse of the Complaint Procedure

If a complainant files vexatious, harassing, or scurrilous complaints, or otherwise abuses the complaint procedure, the council, after affording the complainant an opportunity to respond in writing, may restrict or impose conditions upon the complainant's use of the complaint procedure. Any restrictions or conditions imposed upon a complainant shall be reconsidered by the council periodically.

2. The response also endeavors to repeat the contention, advanced by Sassower in prior submissions, that various judges, including the writer, have improperly received representation by the United States in litigation Sassower has brought against various defendants, including judicial officers. He continues to labor under the misguided impression that such representation was improper for lack of a "scope" certification. Under 28 U.S.C. § 2679(d), the Attorney General is authorized to certify that an employee of the United States, sued under certain circumstances, was "acting within the scope of his office or employment at the time of the incident out of which the claim arose," in which event the United States is substituted as the party defendant. This authority of the Attorney General to substitute the United States as a defendant in lieu of an employee has nothing to do with the authority of the United States Department of Justice to conduct litigation in which an officer of the United States is a party. *See* 28 U.S.C. § 516; *see also* 28 U.S.C.

onstrates no awareness of the frivolous and vexatious nature of his prior complaints, a circumstance that indicates the likelihood that such abuse of the complaint procedure will continue unless some protective procedures are instituted.

With respect to civil litigation, courts have recognized that the normal opportunity to initiate lawsuits may be limited once a litigant has demonstrated a clear pattern of abusing the litigation process by filing vexatious and frivolous complaints. Among the restrictions imposed have been prohibiting the filing of any matters in a designated category, *see, e.g., Villar v. Crowley Maritime Corp.*, 990 F.2d 1489 (5th Cir.1993), *cert. denied*, — U.S. —, 114 S.Ct. 690, 126 L.Ed.2d 658 (1994); *Demos v. U.S. District Court for the Eastern District of Washington*, 925 F.2d 1160 (9th Cir.), *cert. denied*, 498 U.S. 1123, 111 S.Ct. 1082, 112 L.Ed.2d 1186 (1991); requiring leave of court for future filings, *see, e.g., In re Burnley*, 988 F.2d 1 (4th Cir.1992); *Cofield v. Alabama Public Service Commission*, 936 F.2d 512 (11th Cir. 1991); and limiting *in forma pauperis* status, *see, e.g., In re Sassower*, — U.S. —, 114 S.Ct. 2, 126 L.Ed.2d 6 (1993); *Demos v. Storrie*, — U.S. —, 113 S.Ct. 1231, 122 L.Ed.2d 636 (1993). A "leave of court" requirement or other restrictions have been imposed upon Sassower by the Court of Appeals for the Second Circuit, *Sassower v. Mahoney*, No. 88–6203, 1987 WL 26596 (2d Cir. Dec. 3, 1990), the District Court for the Eastern District of New York, *In re Sassower*, 700 F.Supp. 100 (E.D.N.Y.1988), and the District Court for the Southern District of New York, *United States f/b/o Sassower v. Sapir*, 87 Civ. 7135, 1987 WL 26596 (S.D.N.Y. Nov. 18, 1987); *Raffe v. Doe*, 619 F.Supp. 891 (S.D.N.Y.1985); *see also In re Martin-Trigona*, 9 F.3d 226 (2d Cir.1993) (explaining "leave of court" procedures applicable to Sassower and another sanctioned litigant in the Court of Appeals).

In other circuits, restrictions have also been imposed with respect to initiation of judicial misconduct complaints pursuant to 28 U.S.C. § 372(c). In the First Circuit, an order has been entered by the Judicial Council directing that complaints filed by a vexatious complainant, if found by the Chief Judge to be repetitious of earlier filings or to request relief clearly outside of the ambit of 28 U.S.C. § 372(c), will not be processed as judicial misconduct complaints unless the Chief Judge so directs. *In re Rudnicki*, 1st Cir. Judicial Council, Nov. 4, 1985. In the Third Circuit, an order has been entered by the Judicial Council prohibiting a vexatious complainant from filing repetitive and frivolous judicial misconduct complaints. *In re Silo*, 3d Cir. Judicial Council, May 4, 1984. In the Fifth Circuit, an order has been entered by a circuit judge prohibiting a vexatious complainant from filing further judicial misconduct complaints without permission to file having been obtained from a member of the Judicial Council. *In re McAfee*, Order of Judge Gee, 5th Cir., Nov. 20, 1990.

[1, 2] We conclude that, just as those who abuse the normal processes of litigation may be restricted in their opportunity to initiate new lawsuits, those who abuse the judicial misconduct complaint procedure may also be restricted in their opportunity to initiate new misconduct complaints. We also conclude that a "leave to file" requirement, foreclosing the filing and normal processing of a misconduct complaint unless leave to file has first been obtained from the Chief Judge, is the appropriate first level of sanction to be imposed on a person who abuses the misconduct procedure by filing a series of frivolous and vexatious complaints. The integrity of the misconduct complaint procedure, a matter of importance to all persons with a legitimate basis for making a complaint within the scope of 28 U.S.C. § 372(c), will best be maintained by imposing a "leave to file" restriction on those who abuse this procedure.

[3] We also conclude that the pattern of frivolous and vexatious misconduct complaints filed by Sassower merits the imposition of a "leave to file" requirement upon him. Not only have his complaints been regularly dismissed as frivolous or plainly related to the merits of litigation, but he has also pursued the technique of other vexatious litigants of launching new complaints against judicial officers for their actions in dismissing his prior complaints. Sassower employed that tactic against two former Chief Judges of this Circuit. Moreover, prior dismissal orders have repeatedly included warnings that filing additional frivolous misconduct complaints risked the imposition of restrictions.

Accordingly, it is hereby Ordered that George Sassower shall not file any subsequent judicial misconduct complaints in this Court or any document related to such judicial misconduct complaints without first obtaining from the Chief Judge leave to file, and the Clerk is directed to return to Sassower, unfiled, any judicial misconduct complaint or document related thereto submitted by Sassower that is not accompanied by an application seeking leave of the Chief Judge to file. If leave to file is granted, the complaint shall be filed and processed in the normal course; if leave to file is denied, the complaint shall be returned to the complainant unfiled, in which event the Clerk shall maintain an appropriate record of the receipt and return of the complaint.

§§ 519, 547. Each Chief Judge, including the writer, has recused himself in all judicial misconduct complaints in which Sassower has alleged improper representation by the Department of Justice in providing representation to a Chief Judge.

Antonios LATSIS, Plaintiff–Appellant,

v.

CHANDRIS, INC., Chandris, S.A., Trans Oceanic Shipping Co., Ltd., Defendants–Appellees.

No. 735; Docket 93–7704.

United States Court of Appeals, Second Circuit.

Argued Dec. 6, 1993.

Decided March 24, 1994.

Worker who suffered detached retina aboard vessel sought recovery under Jones Act based upon alleged medical malpractice of vessel's doctor. The United States District Court for the Southern District of New York, Loretta A. Preska, J., entered judgment on jury verdict against seaman, and he appealed. The Court of Appeals, Oakes, Senior Circuit Judge, held that: (1) it was plain error to instruct jury that worker had to be either permanently assigned to vessel or to perform substantial part of his work on vessel; (2) substantial connection requirement for seaman status under Jones Act would be met if worker established employment-related contribution that was limited to single vessel or group of vessels and was substantial in terms of its duration or nature; and (3) period that vessel was in dry dock could be considered in determining whether worker satisfied substantial connection requirement.

Vacated and remanded with instructions.

Kearse, Circuit Judge, filed dissenting opinion.

1. Federal Courts ⇐630.1

Normally, reviewing court will not consider challenge to jury charge if party failed to object at trial, and reversal will be warranted only if district court committed plain error. Fed.Rules Civ.Proc.Rule 51, 28 U.S.C.A.

2. Federal Courts ⇐630.1

Although even plain error will not warrant reversal if it is harmless, reviewing court will reverse where plainly erroneous instruction misapplies law as to core issue in case resulting in substantial prejudice of party challenging instruction on appeal. Fed. Rules Civ.Proc.Rule 61, 28 U.S.C.A.

3. Seamen ⇐2

It is not necessary that worker be aboard a vessel naturally and primarily as aid to navigation for worker to qualify as "seaman" under Jones Act; instead, key to seaman status as employment-related connection to vessel in navigation. Jones Act, 46 App.U.S.C.A. § 688.