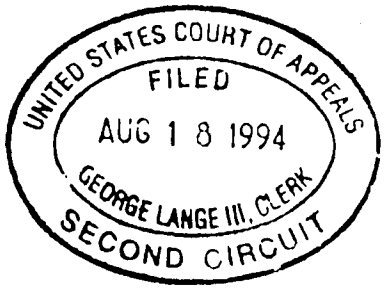

JUDICIAL COUNCIL

OF THE SECOND CIRCUIT

In re

CHARGE OF JUDICIAL MISCONDUCT 94-8558

JON O. NEWMAN, Chief Judge:

On August 1, 1994, complainant filed a 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 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:

Complainant is an attorney and pro se plaintiff in a lawsuit against his former employer.

Allegations:

Complainant asserts that on June 10, 1994, an episode occurred in open court in which, according to the complaint, the "defendants" handed a document to the judge, that the judge "read" the document, said it was "insufficient," handed it back

to the "defendants," and declined to require that the document be shown to the complainant. The complaint further alleges that subsequently the judge dismissed one of the defendants sua sponte. Complainant alleges that what occurred was an ex parte communication.

Disposition:

The judge reports that on June 10, 1994, a pro se defendant, who is an attorney, while standing next to the bench because the attorney has a hearing impairment, handed up a document that was supposed to be a joint proposed pre-trial order. When the judge inquired if the document had been served upon the plaintiff (the complainant in this proceeding), the judge was informed that it had not been served, whereupon the judge immediately, without reading it, returned it to the pro se defendant who had tendered it. The judge also informed the pro se defendant that the proposed pre-trial order was supposed to be a joint order submitted by both sides.

Though it might have been advisable to permit the complainant to see whatever document the pro se defendant handed up to the judge, the failure to do so, under the circumstances, does not indicate judicial misconduct. Nothing of substance was communicated to the judge on any basis, much less on an ex parte basis. The allegation that the judge "read" the document is speculation on the complainant's part. To whatever extent the

complainant is implying that the subsequent dismissal of another defendant was in any way attributable to the handing up and prompt rejection of the proposed pre-trial order, that implication is also speculative and entirely unsupported.

The complaint is hereby dismissed, pursuant to 28 U.S.C. § 372(c)(3)(A)(i) and Rule 4(c)(1) of the Local Rules, for failure to present a supportable allegation of misconduct.

The Clerk is directed to transmit copies of this order to the complainant and to the judge who is the subject of the complaint.

JON O. NEWMAN
Chief Judge

Signed: New York, New York
August 18, 1994