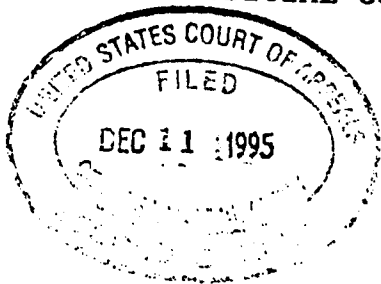


SECOND CIRCUIT JUDICIAL COUNCIL



IN RE ERIC SPIEGELMAN

No. 95-8538

Before: Kearse, Acting Chief Judge, Winter, Miner, Altimari, Mahoney, Walker, Circuit Judges, and Griesa, Sifton, Telesca, Dorsey, McAvoy, and Murtha, Chief District Judges.

AMALYA L. KEARSE, Acting 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 Local Rule 19A; see also 28 U.S.C. § 372(c)(11) (Supp. V 1993).

*Chief Judge Newman has recused himself in this proceeding.

¹Rule 19A provides in full:

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.

EX "F"

1 On October 26, 1995, Eric Spiegelman was ordered to show
2 cause in a written submission, to be filed within 20 days, why an
3 order should not be entered barring him from filing in this Court
4 any subsequent judicial misconduct complaints or any documents
5 related to such complaints, without first obtaining leave to file.
6 The show cause order was prompted by Spiegelman's pattern of filing
7 frivolous and vexatious judicial misconduct complaints and was
8 issued in connection with his fifth complaint, No. 95-8538. Since
9 July 1995, Spiegelman has filed 10 judicial misconduct complaints
10 with the Chief Judge of this Circuit, including 5 since the show
11 cause order. Each complaint acted upon as of the date of the show
12 cause order had been dismissed, in most instances because the
13 allegations were frivolous.

14 On November 17, 1995, the court received Spiegelman's
15 response to the Order to Show Cause as well as additional
16 complaints. The response merely reiterates and extends abusive
17 allegations. Spiegelman demonstrates no awareness of the frivolous
18 and vexatious nature of his prior complaints, a circumstance that
19 indicates the likelihood that such abuse of the complaint procedure
20 will continue unless some protective procedures are instituted.

21 We have previously ruled that those who abuse the
22 judicial misconduct complaint procedure may be restricted in their
23 opportunity to initiate new misconduct complaints. See, e.g., In
24 re Sassower, 20 F.3d 42, 44 (2d Cir. Jud. Council 1994) (imposing
25 restrictions on complainant because of prior history of filing

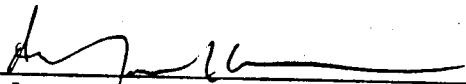
1 frivolous complaints alleging judicial misconduct). In Sassower,
2 we concluded that a "leave to file" requirement, foreclosing the
3 filing and normal processing of a misconduct complaint unless leave
4 to file has first been obtained from the Chief Judge, is the
5 appropriate first level of sanction to be imposed on a person who
6 abuses the misconduct procedure by filing a series of frivolous and
7 vexatious complaints. See id. at 45. The integrity of the
8 misconduct complaint procedure, a matter of importance to all
9 persons with a legitimate basis for making a complaint within the
10 scope of 28 U.S.C. § 372(c), will best be maintained by imposing a
11 "leave to file" restriction on those who abuse this procedure.

12 We conclude now that the pattern of frivolous and
13 vexatious misconduct complaints filed by Spiegelman merits the
14 imposition of a "leave to file" requirement. As in Sassower,
15 Spiegelman's complaints have been regularly dismissed as frivolous
16 or plainly related to the merits of the litigation. Spiegelman has
17 also pursued the technique disapproved of in Sassower, see id., of
18 launching new complaints against judicial officers for their
19 actions in dismissing his prior complaints. He has done so despite
20 warnings in prior dismissal orders that filing additional frivolous
21 misconduct complaints risked the imposition of restrictions.

22 Accordingly, it is hereby ORDERED that Eric Spiegelman
23 shall not file in this Court any subsequent judicial misconduct
24 complaints or any document related to such judicial misconduct
25 complaints without first obtaining from the Chief Judge leave to

1 file, and the Clerk is directed to return to Spiegelman, unfiled,
2 any judicial misconduct complaint or document related thereto
3 submitted by Spiegelman that is not accompanied by an application
4 seeking leave of the Chief Judge to file. If leave to file is
5 granted, the complaint shall be filed and processed in the normal
6 course; if leave to file is denied, the complaint shall be returned
7 to the complainant unfiled, in which event the Clerk shall maintain
8 an appropriate record of the receipt and return of the complaint.
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11 FOR THE COUNCIL
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Amalya L. Kearse, Acting Chief Judge