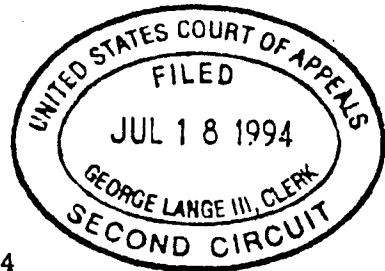


ex parte

JUDICIAL COUNCIL OF THE
SECOND CIRCUIT



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In re

CHARGE OF JUDICIAL MISCONDUCT

94-8544

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JON O. NEWMAN, Chief Judge:

On June 9, 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 the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers (the Local Rules), charging a magistrate judge of this Circuit (the magistrate judge) with misconduct.

Background:

Complainant is a pro se plaintiff in an action filed in December 1993. The magistrate judge entered a pretrial order on February 24, 1994, and the parties entered into a Stipulation and Order of Dismissal on March 29, 1994.

Allegations:

Complainant alleges that the district court sabotaged his lawsuit and claims that the magistrate judge "threatened [complainant] at the status conference" when, in response to complainant's request for a dismissal, the

Ex "H"
7/20/94 petition for review denied & reviewed
stayed: 7/18/94

magistrate judge said, "'you don't get one, these lawyers are going to take all your property.'" Complainant also asserts that the magistrate judge refused to speak with complainant in private.

In addition to the allegations against the magistrate judge, complainant claims that the pro se clerk was rude and tried to harm complainant's case, that the magistrate judge's law clerk lied to him, that the Clerk's Office staff "did their best to give [complainant] bogus information," and that the district court turned complainant's attorney against him.

Complainant asserts that the course of conduct described is "organized crime."

Discussion:

There is no transcript of the status conference in which complainant alleges the magistrate judge threatened him. In response to the allegation, the magistrate judge states that complainant and attorneys for the several defendants in complainant's lawsuit appeared before him for a status conference, that the defense attorneys stated that they were going to move for summary judgment, and that complainant stated that he was thinking of withdrawing the case. The magistrate judge informed complainant that, if complainant was considering withdrawing the case, he should do so promptly, because if the attorneys spent time on motions for summary

judgment and were successful, under the Rules, the attorneys could ask for and could be awarded costs to be paid by complainant. Informing complainant of the possibility that, under the Rules, costs related to litigation may be imposed upon him is not a threat. The magistrate judge may properly provide such information that a pro se litigant might want to consider in evaluating his position. Accordingly, this portion of the complaint is dismissed for failure to allege misconduct, pursuant to 28 U.S.C. § 372(c)(3)(A)(i) and Rule 4(c)(1) of the Local Rules.

To the extent complainant asserts that the magistrate judge refused to speak with complainant in private, complainant fails to allege misconduct. It is inappropriate for a judicial officer to engage in ex parte conversations with a party to a proceeding.¹ Accordingly, this portion of the complaint is also dismissed for failure to allege misconduct, pursuant to 28 U.S.C. § 372(c)(3)(A)(i) and Rule 4(c)(1) of the Local Rules.

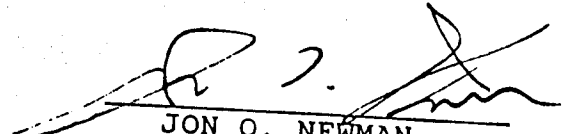
To the extent complainant alleges misconduct by the magistrate judge's law clerk or any member of the Clerk's

¹ The Code of Conduct for United States Judges, Canon 3A(4) states, in pertinent part:

"A judge should accord to every person who is legally interested in a proceeding, or the person's lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte communications on the merits, or procedures affecting the merits, of a pending or impending proceeding."

Office staff, the complaint is outside the scope of the Act, which applies only to the conduct of judicial officers. These portions of the complaint are hereby dismissed pursuant to 28 U.S.C. § 372(c)(3)(A)(i) and Rule 4(c)(4) of the Local Rules.

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


JON O. NEWMAN
Chief Judge

Signed: New York, New York
July 18, 1994

JUL 19 1994