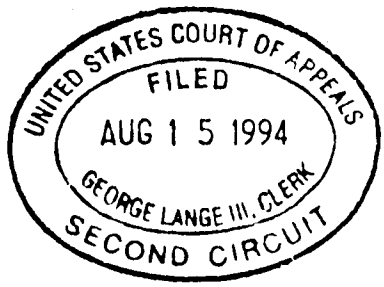
JUDICIAL COUNCIL OF THE

SECOND CIRCUIT



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In re

CHARGE OF JUDICIAL MISCONDUCT 94-8547

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JON O. NEWMAN, Chief Judge:

On June 21, 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 bankruptcy court judge of this Circuit (the judge) with misconduct. This is complainant's second complaint against the judge. The earlier complaint was dismissed by order of the chief judge on June 29, 1994 and a petition for review is pending.

Allegations:

Complainant alleges that during a proceeding on May 5, 1993, where only counsel for debtor [Attorney A] formally appeared, the judge permitted Attorney A to go off the record, engaged in an ex parte conversation with Attorney A for approximately ten minutes on a matter that was not on the calendar for that day and, at the hearing on the matter discussed, relied upon the substance of the ex parte

AO 72A
(Rev. 8/82)

conversation, not the record before him, to rule in favor of the debtor.

Discussion:

In response to complainant's allegations, the judge states that on May 5, 1993, there was confusion concerning the calendar and the scheduling of certain motions, and that only Attorney A made a formal appearance, although complainant sat with Attorney A at the counsel table. The judge states also that Attorney A went off the record to clarify the calendar entries, that Attorney A remained at counsel's table and that the conversation with Attorney A was not a side bar and did not "present a window of opportunity for [Attorney A] to coax the Court to rule in the Debtor's favor on the exclusivity motion scheduled for the next day." The judge further states that he is informed that an attorney for the Official Committee of Unsecured Creditors of the debtor represented by Attorney A was present in the courtroom and did not come forward to raise an ethical objection during the off the record discussion.

Inquiry of two other individuals who were in the courtroom on May 5, 1993, was made concerning their recollection of the proceedings before the judge on that day. Each gave an account that substantially supports the judge's recollection.

Disposition:

Based upon the foregoing, complainant's assertion of ex parte communications is not supported. Accordingly, the complaint is hereby dismissed as unsupported, pursuant to 28 U.S.C. § 372(c)(3)(A)(iii) and Rule 4(c)(3) of the Local Rules.

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 15, 1994