11-18-1999

Correspondence: Michael Nwogugu re: judicial complaint

Roger J. Miner
Senior Judge, U.S. Court of Appeals for the Second Circuit

P. O. Box 170002
Brooklyn NY 11217
November 13, 1999

The Clerk, US Court Of Appeals For The Second Circuit
40 Center Street, Foley Square
New York, NY 10007
Attention: Mr. Bernard Madsen

Re: Filing Of Substitute Petition For Review Of Chief Judge Winter's October 4, 1999 Decision On Judicial Conduct Complaint #99-8534, For Disciplinary/Remedial Action Against Judge D. Cote For Disability And Misconduct In C.A.#98-cv-2441-DLC (SDNY).

Dear Mr. Madsen:

With regard to your letter of November 9, 1999, in which you indicated that you will not docket my substitute Petition For Review (filed on 11-4-99) in Judicial Council Complaint #99-8534, please note that my substitute Petition For Review filed in Complaint #98-8584, was filed and ruled upon by the Judicial Council Of the Second Circuit. Your letter cited Rule 6 of the Rules of The Judicial Council Of The Second Circuit Governing Complaints Against Judicial Officers Under 28 § USC 372(c). Rule 6 does not explicitly bar filing of substitute Petitions For Review. Rule 6 merely states that Petitions For Review must be filed within thirty days of the Order disposing of the Complaint. In this instance, the thirty-day period expired on 11-3-99, my original Petition For Review was filed timely on 11-3-99, and my substitute Petition For Review was filed on 11-4-99. Since my substitute Petition For Review is not materially different, but contains a better explanation of my charges and additional US Supreme Court cases, the substitute Petition For Review should be addressed by the Judicial Council. Two copies of a revised substitute Petition For Review in Complaint #99-8534 are attached for action.

I look forward to a favorable consideration.

Sincerely,

M. Nwogugu

Michael Nwogugu

cc: Judges Of The US Court Of Appeals For The Second Circuit

Substitute (original filed on 11/3/99
#99-8534

P. O. Box 170002
Brooklyn NY 11217
November 2, 1999

The Clerk, US Court Of Appeals For The Second Circuit,
And The Judicial Council Of The Second Circuit
US Court Of Appeals For The Second Circuit
40 Center Street, Foley Square
New York, NY 10007

Re: Petition For Review Of Chief Judge Winter's October 4, 1999 Decision On Judicial Conduct Complaint #99-8534, For Disciplinary/Remedial Action Against Judge D. Cote For Disability And Misconduct In C.A.#98-cv-2441-DLC (SDNY).

Dear Ladies And Gentlemen:

Pursuant to Rule 5 of The Judicial Council Of The Second Circuit Governing Complaints Against Judicial Officers Under 28 USC § 372(c), I hereby petition the Judicial Council of the Second Circuit for review of Chief Judge Winter's October 4, 1999 Order, and for disciplinary action against Judge Denise Cote for misconduct in C.A.#98-cv-2441-DLC, because: a) my claims against KPMG are related to my claims against PaineWebber, and KPMG was properly joined in C.A.#98-cv-2441-DLC, pursuant F.R.C.P. and federal statutes, b) my allegations of misconduct and mental and physical disability are wholly supported by Judge Cote's actions, the facts and case law cited, c) my allegations of misconduct and disability are not directly related to the merits and procedural rulings by Judge Cote, and d) the issue of extension of time to appeal is moot because Judge Cote's order, and Rule 60(b) order and 10/23/98 judgement are not final and do not comply with F.R.C.P. Rules 54(b,c), 79(a) & 58, and F.R.A.P. Rule 4(a), e) Judge Cote refused to rule on my claims, lied about my filings, refused to recuse herself or to rule on my recusal motions, and violated my constitutional rights by intentionally refusing to comply with binding law because of my race, color and national origin, f) Judge Cote's consistent pattern of misconduct is clear evidence of mental and physical disability that warrants remedial and or disciplinary action which cannot be obtained by other means. Judge Cote engaged in criminal misconduct in proceedings in C.A.#98-cv-2441-DLC. Even if Judge Cote's 10-23-98 judgement and Rule 60(b) Order were final and appealable, the nature of her disability and misconduct in C.A.#98-cv-2441-DLC cannot be necessarily remedied on appeal. Chief Judge Winter has not made the necessary distinction between matters "directly related to the merits of a decision or procedural ruling", as opposed to "blantant and intentional refusal to perform judicial functions in order to achieve an illegal and or discriminatory objective" and "criminal misconduct by a judge, involving intent, knowledge and purpose", and "false statements intentionally made by a judge to complicate and delay proceedings" and "bias in judicial proceedings", all of which warrant disciplinary action under 28 USC § 372 and New York statutes which have similar standards. ***Matter Of Duckman***, 677 NYS2d 248, ***Matter Of Roberts***, 666 NYS2d 1017, ***Matter Of Reeves***, 480 NYS2d 463, ***Impeachment Of Judge Nixon***, US Congress (135 Congr.Rec.H1802-02). ***Matter Of Reeves***, 480 NYS2d 463. I refer to the record in C.A.#98-cv-2441-DLC, and to the records in US Second Circuit Judicial Council Cases #98-8584 and #99-8534, and my December 1998 Complaint to the US Congressional Judiciary Committees. These issues are addressed as follows:

1. Judge Cote's behavior in C.A.#98-cv-2441-DLC is evidence of physical and mental disability, and constitutes criminal activity and misconduct that is distinct and separate from the merits of the disputes and from her procedural rulings. In summary, such misconduct includes but are not limited to:

1a. **In violation of the Equal protection clause of the US Constitution and state/federal criminal laws, Judge Cote knowingly and intentionally entered a non-final judgement in C.A.#98-cv-2441-DLC solely to illegally deprive me of a favorable judgement, and to frustrate my efforts at appealing her rulings:** In Judge Cote's April 15, 1999 Order, she stated that: a) the time to appeal was being extended once and for ten days only, b) the two valid reasons and unique circumstances for requesting for an extension of time to appeal were that a favorable decision by the Judicial Council on my Complaint #98-8584 or a favorable ruling on my F.R.C.P. Rule 60(b) motions could potentially eliminate the need for an appeal. ***Thompson v. INS***, 375 US 384. Subsequently, I moved for a second extension of time to appeal and cited binding US Supreme Court precedent which states that for "extraordinary reasons", a second extension of time to appeal can be granted. Judge Cote entered another order refusing to extend the time to appeal, and the US District Court's (SDNY) Pro Se Office refused docket my filings, and my motions and letter-briefs requesting for another extension of time to appeal. ***In Re Sharon Steel***, 918 F2d 434 (CA3). The status is that the ten-day extension period for appeal expired in April 1999, and although another formal extension can be granted because there are "extraordinary circumstances", Judge Cote has refused to grant such an extension. While Chief Judge Winter 10-4-99 Order stated that the "....the Complainant's remedy is to appeal the rulings

through regular appellate channels.....", under ***Waldorf v. Shuta***, 142 F3d 601, and ***HBE Leasing***, 48 F3d 623 at 631 (CA2)*(further proc.)* 61 F3d 1054, ***Liberty Mutual***, 424 US 737 (*cert. den.*) 50 LEd2d 611, Judge Cote's 1998 orders and 10-23-98 judgement were void and fraudulent because they did not comply with F.R.C.P. Rules 54(b,c), 79(a) & 58 and F.R.A.P. Rule 4(a), and did not expressly direct entry of judgement and did not use the mandatory phrase "...no just reason for delay....", ***Cullen***, 618 F2d 226 (CA2), ***Hughes v. Halifax County***, 823 F2d 832 (*app. after remand*) 855 F2d 183 (*cert. den.*) 102 LEd2d 991, ***Barber***, 41 F3d 553 (CA9), ***US v. Indrelunas***, 36 LEd2d 202, and they contained procedural history and reasons for disposition, and they were based on PaineWebber's deficient motion for partial summary judgement, and denial of my summary judgement motion, and Judge Cote did not adjudicate all my claims and issues including my motions for injunctions (within the meaning of 28 USC 1292(a)(1)), and KPMG and PaineWebber were valid parties and had admitted to my claims. Judge Cote did not certify any orders for interlocutory appeal. Judge Cote's Order on my December 1998 Rule 60(b) motion was not final or appealable because it did not rule on all my claims and motion for injunction (see 28 USC § 1292(a)(1)), it did not rule on the issue of whether the Rule 60(b) motion effectively transferred disputes from other courts to C.A.#98-cv-2441-DLC (see Collateral Order doctrine and ***Coppers & Lybrand v. Livesay***, 437 US 463), it contained procedural history and reasons for disposition. Since PaineWebber's partial summary judgement motion was filed late and did not comply with F.R.C.P. Rules 56, 12(f) & 12(a), and PaineWebber's Complaint did not comply with Rule 9(b,f,g) and there was no trial, PaineWebber's claims were not properly presented and Judge Cote's 10-23-98 judgement does not comply with F.R.C.P. Rule 54(c) and is void, ***In Re Rivinius***, 977 F2d 1171, ***King v. Cooke***, 26 F3d 720, ***Associated Business Tel. v. Cohn***, 1995 WL 607545 (NDCA),***Cioffe***, 676 F2d 539. Therefore, under binding precedent, the US Second Circuit does not have any appellate jurisdiction over C.A.#98-cv-2441-DLC pursuant to 28 USC §§ 1291 & 1292. A petition for writ of mandamus is granted only on rare occasions and may not correct all of Judge Cote's misconduct and cannot order the required disciplinary action or action to remedy her disability. I cannot file my claims in state courts because they are still pending in, and were not fully addressed in C.A.#98-cv-2441-DLC, C.A.#96-12282-GAO (D.Mass.), C.A.#97-10282-RCL (D.Mass.) and C.A.#98-11069-RCL (D.Mass.), none of which contained final judgements in compliance with F.R.C.P. Rules 54(b), 58 & 79 and F.R.A.P. Rule 4(a). ***Miller Brewing***, 605 F2d 990 (CA7), ***Cullen***, 618 F2d 226 (CA2), ***US v. Indrelunas***, 36 Led2d 202. Judge Cote's misconduct has to be corrected before any further proceedings, and Judge Cote implicitly acknowledged in her April 15, 1999 Order, that the Judicial Council's procedures can correct such mistakes and misconduct.

1b) **Discriminating against me because of my race, color (black) and national origin (Nigerian)** – such discrimination affects, but is not directly related to the merits or procedural rulings, but is clearly a deep-seated attribute which can be inferred from Judge Cote's pattern of disobeying binding law, because the potential benefactor is a foreigner and a black person. ***Pulliam v. Allen***, 466 US 522, ***Mitchum***, 407 US 225, ***Air-Shields***, 891 F2d 63 (CA__), ***Matter Of Duckman***, 677 NYS2d 248, ***Matter Of Roberts***, 666 NYS2d 1017, ***Matter Of Reeves***, 480 NYS2d 463, ***Impeachment Of Judge Nixon***, US Congress (135 Congr.Rec.H1802-02). The discrimination is readily inferable because similarly situated prudent judges would comply with the law, and decide all issues and claims, and then enter final judgements. For example, intentionally refusing to rule on my motions and claims because of my race, color and national origin, does not involve any procedural ruling or merits because no decisions were made, but it involves substantial and punishable misconduct by the judge. My allegations of discrimination are based on disparate treatment and are wholly supported by the cases and events in C.A.#98-cv-2441-DLC.

1c) **Fraudulent and criminal misconduct:** Judge Cote knowingly committed criminal acts (ie. fraud, perjury, conspiracy to defraud, obstruction of justice, etc.), that are not directly related to merits or procedural rulings. I refer to my initial Complaint to the Judicial Council and to my August-December 1998 filings in C.A.#98-cv-2441-DLC. Judge Cote had the requisite intent because she has been a lawyer for many years, and she knowingly made false statements with knowledge of the consequences of such misconduct. ***Matter Of Duckman***, 677 NYS2d 248, ***Matter Of Reeves***, 480 NYS2d 463. See 28 USC 372(c)(14). Judge Cote expressly refused to docket or rule on my February 1999 letter briefs which raised new and relevant issues and supporting case law and publications, all of which would have proved that my conspiracy, Civil RICO, 42 USC § 1983 and other claims against PaineWebber and KPMG are valid, related and similar. These document could have been deemed Rule 60(b) material. Again, such misconduct is not directly related to any ruling, and cannot be appealed because Judge Cote's 10-23-98 judgement does not comply with F.R.C.P. Rule 54(b) and did not address all my claims, and her Order on my Rule 60(b) motion did not address all my claims. By refusing to subpeona the records of PaineWebber and KPMG (which would have helped prove my case), and by refusing to docket relevant materials and excluding materials from evidence, and by issuing her January 7, 1999 Order, Judge Cote effectively colluded with PaineWebber and KPMG to obstruct justice in proceedings in C.A.#98-cv-2441-DLC. Judge Cote did not act on: i) many of my 12/1998-1/1999 Affidavits and motions for intervention, post-judgement receivership proceedings, for recusal of Judge Cote pursuant to 28 USC § 455 (which can be effected even after a judgement is entered or after a ruling on a 28 USC § 144 motion), and my motion for appointment of a three-judge court, all of which PaineWebber and KPMG did not oppose, ii) my motions for permanent injunctions, which PaineWebber and KPMG admitted to, iii) KPMG and PaineWebber's Stipulations and admissions in prior actions which are binding in subsequent actions, and iv) my claims against KPMG and PaineWebber pursuant to the US Bankruptcy Code - see 11 USC § 101 & 547(c)(3), ***Ohio v. Kovacs***, 469 US 274, ***Penn. Dept. of Pub. Welfare***, 495 US 552, ***Johnson v. Home State Bank***, 501 US 552, ***Matter Of Duckman***, 677 NYS2d 248, ***In Re Temple***, 851 F2d 1269 (CA11), ***Burkett***, 505 F2d 217 (CA10)(*cert. den.*) 423 US 876. In these circumstances, Judge Cote's refusal to rule on my claims and her intentional false

statements are essentially criminal (intentional misconduct and attributed knowledge of misconduct), and requires disciplinary action by the Judicial Council to deter similar abuse by other judges, and thus, Judge Cote's misconduct cannot be adequately remedied by a writ of mandamus.

1d) **Exceeding her statutory authority and bias.** Judge Cote intentionally exceeded her authority by ordering that I should not file anymore papers in a case in which my claims have not been fully addressed and no final judgement was entered, ***Air-Shields***, 891 F2d 63, ***Burkett***, 505 F2d 217, ***Will v. US***, 389 US 90. By her January 7, 1999 order, and in violation of the Due Process and Equal Protection clauses Judge Cote illegally deprived me of my constitutional right to file motions pursuant to Rules 60(b)(2,3,4,5) and for other appropriate post-judgement relief. The requirements for forming three-judge court under 28 USC § 2283 and Southern District Of New York Local Rules are statutory, jurisdictional and mandatory, and are not left to the discretion of the initial judge, and I complied with all such requirements. Judge Cote's refusal to address this issue cannot be appealed because no final judgement has been entered, and the issue is not directly related to any ruling.

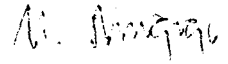
1e) **F.R.C. P. Rule 60(b)**: Under ***Covington***, 629 F2d 730 (CA2), ***Standard Oil***, 429 US 17, ***Pioneer Investment***, 507 US380, ***Whitehouse***, 32 FRD 247 (EDPA), and ***Winfield Associates v. W.L. Stonecipher***, 429 F2d 1087 (CA10), I initiated new lawsuits against KPMG and PaineWebber by filing what were in effect, F.R.C.P. Rule 60(b) motions in C.A.#98-cv-2441-DLC (without a Complaint) to address mistakes, fraud etc., that occurred in actions at the US District Court in Boston and US First Circuit, and the US District Of Columbia Circuit, ***Rohm & Haas***, 103 FRD 541 (SDNY), ***Balla v. Idaho State Board***, 869 F2d 461, ***Winfield Associates v. Stonecipher***, 429 F2d 1087 (CA10). Under ***US v. Baus***, 834 F2d 1114 (CA1), ***Good v. Penn. R.R.***, 384 F2d 989, ***Mainline Theatres***, 298 F2d 801, ***Bostick Foundry***, 797 F2d 280 (CA6), and ***Barbiarz***, 603 NYS2d 915, a breach of a stipulation or settlement agreement as in these two disputes with PaineWebber and KPMG, is grounds for grant of F.R.C.P. Rule 60(b) relief, even if final judgements were not entered in prior lawsuits at the US District Court (D.Mass.), US First Circuit and US D.C. Circuit. Under ***US v. Backofen***, 176 F2d 263 (CA3), ***Dunlop***, 672 F2d 1044 (CA2), ***Winfield Associates***, 429 F2d 1087 (CA10), ***Southerland v. Irons***, 628 F2d 978 (CA6), ***Laguna Royalty Co.***, 350 F2d 817 (CA5), and ***US v. Klapprott***, 335 US 601 (*mod.*) 336 US 942, new and distinct Rule 60(b) actions can be filed against a non-party, within a different existing lawsuit such as C.A.#98-cv-2441-DLC (SDNY). Thus, my April-July 1998 filings in C.A.#98-cv-2441-DLC could be construed as Rule 60(b) motions, and Judge Cote's 7-27-98 Order To Show Cause was in effect, a ruling on my Rule 60(b) motion, the US District Court implicitly assumed jurisdiction, and KPMG waived objections to jurisdiction, by not responding timely. ***Frank Keevan & Son***, 107 FRD 665. Even if Judge Cote did not deem my April 1998 and June/July/August 1998 filings in C.A.#98-cv-2441-DLC as Rule 60(b) motions, my December 1998 Rule 60(b) motion was a continuation of C.A.#96-12282-GAO (D.Mass.), C.A.#97-10282-RCL (D.Mass.), C.A.#98-11069-RCL (D.Mass.), C.A.#97-1407 (CA1), C.A.#97-8020(CA1), C.A.#98-1080 (CA1) and C.A.#97-5305 (CADC) in C.A.#98-cv-2441-DLC (SDNY), and thus, Judge Cote had jurisdiction over KPMG – Judge Cote intentionally refused to address this issue in her Orders on my December 1998 Rule 60(b) motion or earlier motions, and thus those Orders are not appealable under the Collateral Order doctrine, ***Coopers & Lybrand v. Livesay***, 437 US 463. Again, since Judge Cote's misconduct was intentional and with purpose, there are issues of bias, perjury and obstruction of justice.

1f) Judge Cote, Judge Dolinger and Daniel Kinburn (attorney for PaineWebber) and Donald Marron (PaineWebber's Chairman) are all graduates of Columbia University. Some of PaineWebber's top executives are Columbia University alumni – note that I requested for a subpeona in early 1999. Judge Cote has lectured at Columbia University Law School. PaineWebber has made and continues to make substantial monetary and other contributions to Columbia Business School and Columbia University. PaineWebber recruits extensively at Columbia University. Around February 1998, just before PaineWebber initiated C.A.#98-cv-2441-DLC, Columbia University sued me in New York State Court, but the matter was settled – I am also a graduate of Columbia University Business School. In these circumstances, the economic, professional, legal and social ties among Columbia University, PaineWebber, Judge Cote, Judge Dolinger, Donald Marron and Daniel Kinburn among others, is grounds for a reasonable inference that Judge Cote remains biased against me and in favor of PaineWebber, and will try to protect Columbia University's corporate donors and benefactors.

CONLCUSION

For these reasons, the Judicial Council of the Second Circuit should institute disciplinary proceedings against Judge D. Cote, and remedy her misconduct in proceedings in C.A.#98-cv-2441-DLC, and her physical and mental disability.

Sincerely,



Michael Nwogugu

cc: Mr. Dennis Hastert, Speaker, US House Of Representatives
The Judiciary Committee Of The US Senate
The Judiciary Committee Of The US House Of Representatives

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
United States Courthouse
40 Foley Square - Room 1702
New York, N.Y. 10007

Karen Greve Milton
Acting Clerk

November 9, 1999

Mr. Michael Nwogugu
P.O. Box 170002
Brooklyn, New York 11217

RE: Judicial Conduct Complaint
Docket No.: 99-8534

Dear Mr. Nwogugu:

This letter is to acknowledge receipt of your correspondence dated November 2, 1999, received in this office on November 4, 1999.

To the extent that the document is intended to amend or substitute the pending petition for review of an order of the Chief Judge dismissing your judicial conduct complaint in the above indicated docket number, it is being returned to you because of the following reason:

1. Rule 6 makes no allowance for amendments or substitutions to petitions for review.

Your petition for review is still pending and you will be notified in writing once a decision has been entered.

Sincerely,

Bernard F. Madsen Jr.
Deputy Clerk

Enclosures