

23-90039-jm
January 26, 2024
Chief Judge

**JUDICIAL COUNCIL OF THE
SECOND CIRCUIT**

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In re
CHARGE OF JUDICIAL MISCONDUCT Docket No. 23-90039-jm

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DEBRA ANN LIVINGSTON, *Chief Judge*:

In June 2023, the Complainant filed a complaint with the Clerk’s Office of the United States Court of Appeals for the Second Circuit pursuant to the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351–364 (the “Act”), and the Rules for Judicial-Conduct and Judicial-Disability Proceedings (the “Rules”), charging a district judge (the “Judge”) of this Circuit with misconduct.

BACKGROUND

In August 2022, Complainant, who is in state custody, filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was assigned to the Judge, who, on August 23, 2022, ordered the State to respond to the petition by October 24, 2022. The State thereafter requested, and the Judge

granted, a one-week extension to file a motion to dismiss. That motion was filed on October 31, 2022.

Thereafter, the Complainant filed a series of motions arguing (1) he should immediately be released from custody because the State had filed a motion to dismiss rather than a response on the merits; (2) the State should be held in contempt for failing to respond to the habeas petition on the merits, and (3) the Judge lacked authority to grant the State the one-week extension referenced above. In response, the Judge entered a text order denying the Complainant's motions and noting that a district court has "discretionary authority to grant extensions of time." Two months later, the Judge granted the State's motion to dismiss and entered judgment accordingly. This misconduct complaint followed.

The misconduct complaint recounts the procedural history described above and challenges the Judge's management of the case and dismissal of the petition. The Complainant argues, for example, that the Judge should not have granted the State an extension because the State had already been given 60 days to respond, which was "generous," and the extension caused "further delay," which was "unacceptable." The Complainant also argues that the State's motion

to dismiss the petition was procedurally flawed, in that it was in the “improper form” and the State lacked standing to file it. Finally, the Complainant argues that the Judge lacked authority to grant an extension because the statutes governing habeas petitions impose “strict time constraints.”

DISCUSSION

The complaint is dismissed.

The allegation that the Judge should not have granted the extension request, either because it was an abuse of discretion or because he lacked statutory authority to do so, is a claim that the Judge got it wrong, not that he engaged in misconduct. Similarly, the allegation that the Judge should not have granted the State’s motion because it was procedurally flawed is a claim that the Judge got it wrong. Accordingly, these allegations are dismissed as “directly related to the merits of a decision or procedural ruling.” 28 U.S.C. § 352(b)(1)(A)(ii); Rule 4(b)(1) (“Cognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse.”); 11(c)(1)(B). Purely merits-related allegations are excluded from the Act to “preserve[] the independence of judges in the exercise of judicial authority by ensuring that the complaint procedure is not used to collaterally call

into question the substance of a judge's decision or procedural ruling." Rule 4 cmt. If the Complainant wishes to challenge the Judge's decisions to grant an extension request and the State's motion to dismiss, he may do so, to the extent the law allows, only through normal appellate procedures.

The Clerk is directed to transmit copies of this order to the Complainant and to the Judge.