

23-90032-jm
February 9, 2024
Chief Judge

**JUDICIAL COUNCIL OF THE
SECOND CIRCUIT**

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In re
CHARGE OF JUDICIAL MISCONDUCT Docket No. 23-90032-jm

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DEBRA ANN LIVINGSTON, *Chief Judge*:

In May 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 circuit judge (the “Judge”) of this Circuit with misconduct.

BACKGROUND

In 2016, the Judge presided over the Complainant’s criminal trial. The jury reached a guilty verdict and the Judge imposed a sentence of 5 years of imprisonment, 3 years of supervised release, and restitution of nearly \$4 million.

In 2020, the Complainant moved to vacate or set aside his conviction and

sentence under 28 U.S.C. § 2255. In 2022, the Judge, who by that point had been confirmed as a circuit judge, denied the motion in a written opinion.

The misconduct complaint in large part alleges that the Judge should not have presided over the Complainant's 28 U.S.C. § 2255 proceeding because at that point he was no longer a district judge. The Complainant appears to acknowledge that the chief circuit judge may sign an order designating a circuit judge to serve as a district judge, but alleges that no such order was signed as to the Judge, and that, to the extent the Judge purports to have been lawfully designated as a district judge, he lied. As evidence, the Complainant provides a document that purports to be a list of judges of the United States Court of Appeals for the Federal Circuit who have sat by designation on other courts since 2006. The Judge's name does not appear on the list, and the Complainant draws the (mistaken) conclusion that the Judge was never properly designated as a district judge.

The complaint also contains a number of *ad hominem* attacks. The Complainant, for example, refers to the Judge using phrases such as "racist liar," "rouge [sic] and racist judge," "liar, criminal, cheater, and racist," and similar invective.

DISCUSSION

The complaint is dismissed.

The allegation that the Judge committed misconduct by acting as a district judge when he had not been properly designated to do so is dismissed as “lacking sufficient evidence to raise an inference that misconduct has occurred.” Rule 11(c)(1)(D). A limited inquiry, consisting of a search of the files of the Clerk’s Office of the United States Court of Appeals for the Second Circuit, confirms that, during the relevant time period, the chief circuit judge had properly designated the Judge “to sit in the United States District Court . . . for such additional time as may be required to complete unfinished business.”

The allegations of racism and bias are also dismissed as “lacking sufficient evidence to raise an inference that misconduct has occurred.” Rule 11(c)(1)(D). The Complainant provides no evidence to support these allegations apart from rulings he regards as incorrect or unfavorable, but rulings for or against a party, without more, are not evidence of racism or bias.

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