

23-90029-jm  
January 24, 2024  
Chief Judge

**JUDICIAL COUNCIL OF THE  
SECOND CIRCUIT**

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In re  
CHARGE OF JUDICIAL MISCONDUCT                      Docket No. 23-90029-jm

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DEBRA ANN LIVINGSTON, *Chief Judge*:

In April 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 December 2022, the Complainant, representing herself, filed a lawsuit in federal district court alleging that a previous judgment against her in state court had been procured through fraud. The matter was assigned to a district judge and then, in January 2023, reassigned to the Judge. In April 2023, the Complainant filed a letter on the docket questioning why the initials on the ECF

header<sup>1</sup> of documents that had been filed before January 2023—i.e., before the Judge had been assigned—had been changed from the initials of the previous judge to the Judge’s initials. The Complainant concluded that the Judge had fraudulently tampered with documents that had been filed before the case was reassigned to her, and requested the Judge’s recusal. The letter further stated that the Complainant had discovered a “powerful organization that is committing heinous crimes against the government to destroy its judicial system,” and expressed dismay at the Judge’s “lack of acknowledgement” of this discovery. The Complainant thereafter filed a motion seeking the Judge’s recusal.

The misconduct complaint, filed on the same day as the recusal motion, alleges that the Judge has failed to “address[] th[e] federal crime of hacking + tampered documents and did not recuse herself in violation of . . . 28 U.S.C. section 455(a).” The Complainant also alleges that the Judge “was not employed in 12/2022” and was “preselect[ed]. . . before she even started working in [the

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<sup>1</sup> “ECF header” refers to a line of text that is automatically added when documents are electronically filed in district court. The automatic text ordinarily contains the docket number of the case, the document number of the filing, the date the document was filed, the initials of the assigned judge, and page numbers.

district in question] in January 2023.” Though not entirely clear, the implication appears to be either (a) the Judge allegedly began to work on the Complainant’s matter before receiving her judicial commission, or (b) the presence of the Judge’s initials on documents that were filed before she received her commission, or before she was assigned to the case, is evidence that the Judge tampered with the Complainant’s filings.

### DISCUSSION

The complaint is dismissed.

To the extent the Complainant raises claims related to the Judge’s decision on whether to recuse, the claims 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) (emphasis added). If the Complainant wishes to challenge the Judge’s decision on whether to recuse, she may do so, to the extent the law allows, only through normal appellate procedures.

The claims relating to the date that the Judge became a judge rest on a false premise: namely, the Complainant’s claim that the Judge did not become a judge

until January 2023. Easily accessible public records establish that the Judge was confirmed by the Senate and received her commission before the Complainant instituted her underlying lawsuit in December 2022. Accordingly, any claims premised on the Judge supposedly beginning to work on the Complainant's case before she became a judge are dismissed as "lacking sufficient evidence to raise an inference that misconduct has occurred." Rule 11(c)(1)(D).

The claim that the Judge tampered with the ECF header of documents filed in the district court is also dismissed as "lacking sufficient evidence to raise an inference that misconduct has occurred." Rule 11(c)(1)(D). ECF headers are added to documents filed through the district court's electronic document filing system and the complaint does not provide credible evidence that the Judge tampered with this process. *See In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability*, 591 F.3d 638, 646 (U.S. Jud. Conf. Oct. 26, 2009) ("Rule 6(b) makes clear that the complaint must be more than a suggestion to a Chief Judge that, if [s]he opens an investigation and the investigating body looks hard enough in a particular direction, [s]he might uncover misconduct. It must contain a specific allegation of misconduct supported by sufficient factual detail to render the allegation credible").

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