

23-90024-jm  
January 26, 2024  
Chief Judge

**JUDICIAL COUNCIL OF THE  
SECOND CIRCUIT**

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In re  
CHARGE OF JUDICIAL MISCONDUCT                      Docket No. 23-90024-jm

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DEBRA ANN LIVINGSTON, *Chief Judge*:

In March 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 November 2022, the Complainant asked the Judge for a modification of the terms of his supervised release, specifically for permission to travel abroad. The Complainant, a naturalized U.S. citizen, sought to renounce his U.S. citizenship and argued that he needed to leave the country to do so. After receiving the Government’s opposition, the Judge sua sponte appointed counsel

for the Complainant from the Criminal Justice Act panel. When the Complainant rejected that counsel, the Judge ordered the Government to file a supplemental brief because its opposition had addressed only whether the Complainant was likely to abscond from supervision, not his right to renounce citizenship.

The Complainant then sought to stay proceedings in district court pending the outcome of this judicial misconduct complaint. The Judge did not explicitly rule on that request. However, in April 2023, the Judge held a preliminary hearing on a report of violations of supervised release, including the Complainant's filing of an expedited passport application. And in July 2023, the Judge denied the Complainant permission to leave the jurisdiction, explaining that denial was "necessary to achieve the second cited purpose of supervised release—namely, 'to protect the public from further crimes of the defendant.'"

The misconduct complaint alleges that the Judge was biased as evidenced by the Judge's appointment of counsel without consulting with the Complainant, the fact that the appointed attorney had not previously worked on a similar issue, that attorney's attempt to "trick" the Complainant into abandoning legal arguments and into pursuing "irrelevant issues," and the Judge's instruction to the Government about what issues to brief. The misconduct complaint seeks

“removal or recusal of [the Judge] from all further action and an appointment of an impartial judge with no prior ties to the U.S. Attorney’s Office.”

## DISCUSSION

The complaint is dismissed.

The complaint principally alleges that the Judge erred by appointing counsel sua sponte, by instructing the Government to brief issues, and by failing to recuse. These are allegations that the Judge got it wrong, not that the Judge engaged in misconduct. The rules and guidance implementing the Act make clear that challenges to the merits of a decision and allegations concerning a failure to recuse are not the proper subject of a judicial misconduct complaint, and should be 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 various decisions, he may do so, to the extent the law allows, only through normal appellate procedures.

The remaining allegation of bias is derivative of the merits-related charges; but to the extent it is separate, it is wholly unsupported and is therefore dismissed as "lacking sufficient evidence to raise an inference that misconduct has occurred." 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(D). The Complainant provides no evidence to support this allegation apart from decisions he regards as erroneous, but decisions for or against a party, without more, are not evidence of bias.

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