

23-90023-jm
January 26, 2024
Chief Judge

**JUDICIAL COUNCIL OF THE
SECOND CIRCUIT**

-----X

In re
CHARGE OF JUDICIAL MISCONDUCT Docket No. 23-90023-jm

-----X

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

The Complainant is the plaintiff in a civil lawsuit that he filed in March 2022. In April 2022, the defendant filed a motion to compel arbitration. The motion was fully briefed as of August 2022. In March 2023, the Judge had not yet ruled on the motion, and the Complainant filed this misconduct complaint, complaining about the Judge’s delay. Specifically, the Complainant states that

“this should be a simple matter to decide,” but that the Judge, by “refus[ing] to render a ruling,” has brought the case to a “standstill . . . thereby denying me access to justice and denying my access to the appeal process.” The docket reflects that the Judge decided the motion in April 2023, after this misconduct complaint was filed.

DISCUSSION

The complaint is dismissed.

The rules and guidance implementing the Act make clear that allegations concerning delay are ordinarily not the proper subject of a judicial misconduct complaint, and should be dismissed under 28 U.S.C. § 352(b)(1)(A)(ii) as “directly related to the merits of a decision or procedural ruling,” “unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” Rule 4(b)(2); *see also* Rule 4 cmt. (“[A] complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge, *i.e.*, assigning a low priority to deciding the particular case.”). The Complainant does not allege habitual delay in a significant number of unrelated

cases, nor does he allege improper motive, and none can be discerned.

Accordingly, the complaint is dismissed.

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