

23-90007-jm  
January 24, 2024  
Chief Judge

**JUDICIAL COUNCIL OF THE  
SECOND CIRCUIT**

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In re  
CHARGE OF JUDICIAL MISCONDUCT                      Docket No. 23-90007-jm

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DEBRA ANN LIVINGSTON, *Chief Judge*:

In February 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, the Complainant filed a lawsuit in district court against a county, a county jail, and a state court judge. The Judge granted the application to proceed *in forma pauperis*. The Complainant thereafter attempted to move for a default judgment, but the clerk’s office noted various deficiencies in the filing, including a failure to provide proof of service. The Judge then dismissed the

complaint sua sponte as barred by the doctrine of claim preclusion, and denied the motion for default judgment as moot. The court of appeals dismissed the Complainant's appeal as frivolous.

The misconduct complaint appears to challenge the Judge's decision to deny the motion for default judgment. The Complainant alleges, for example, that he "requested default judgment, [but the Judge] just does not want to do it," and he requests an order directing the Judge "to deliver the certification of default judgment." He also alleges that the Judge is mentally incompetent; he states that the Judge "is not capable of comprehend[ing] the law, that [the Judge] become senile (exhibiting a loss of cognitive abilities (such as memory) associated with old age)." He provides no evidence of the Judge's alleged disability apart from the Judge's order denying his motion and dismissing his case.

## **DISCUSSION**

The complaint is dismissed.

The claim that the Judge should have granted the motion for default judgment is a claim that the Judge got it wrong, not that she engaged in misconduct. Likewise, an allegation that the result of a decision is itself evidence of a mental disability is merely a challenge to the correctness of that decision.

Accordingly, the complaint is 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, 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.