

22-90242-jm  
February 8, 2024  
Chief Judge

**JUDICIAL COUNCIL OF THE  
SECOND CIRCUIT**

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In re  
CHARGE OF JUDICIAL MISCONDUCT                      Docket No. 22-90242-jm

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DEBRA ANN LIVINGSTON, *Chief Judge*:

In December 2022, 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 magistrate judge (the “Magistrate Judge”) of this Circuit with misconduct.

**BACKGROUND**

The Complainant, a former municipal correctional officer, filed a pro se complaint against the mayor of New York City, the City itself, various municipal officials, and thousands of “John Doe” defendants, describing a conspiracy to surveil and harass her in retaliation for her having complained of workplace

misconduct. The Magistrate Judge issued an opinion recommending dismissal of the complaint for various reasons, including as facially implausible, vexatious, and duplicative of previous filings. After that recommendation was issued—but before the district judge had considered it—the Complainant filed numerous documents, including motions seeking the recusal or disqualification of the Magistrate Judge, and letters directed to the chief district judge, asking for the matter to be reassigned. The chief district judge denied that request, and the Magistrate Judge then directed the clerk of the district court not to accept additional filings from the Complainant, in view of her “continued vexatious filing of numerous frivolous applications and documents.” A district judge thereafter adopted the Magistrate Judge’s recommendation and dismissed the complaint. In September 2023, the court of appeals dismissed the Complainant’s appeal as lacking an arguable basis either in law or in fact.

The misconduct complaint is verbose, but to the extent it is intelligible, it essentially challenges the Magistrate Judge’s refusal to recuse; it alleges that the Magistrate Judge had a “preexisting relationship with the Defendants and the Defendants Counsel/Attorneys in this matter whom he was employed by in his

private capacity as a lawyer,” and that he was biased against the Complainant due to this alleged preexisting relationship.

## DISCUSSION

The complaint is dismissed.

The Rules and guidance implementing the Act make clear that complaints that challenge the merits of a judge’s rulings, including an alleged failure to recuse, 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.*”) (emphasis added); 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 Magistrate Judge’s various decisions, including his decision not to recuse, she 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 Magistrate Judge.