

22-90234-jm
September 8, 2023
Chief Judge

**JUDICIAL COUNCIL OF THE
SECOND CIRCUIT**

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In re
CHARGE OF JUDICIAL MISCONDUCT Docket No. 22-90234-jm

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DEBRA ANN LIVINGSTON, *Chief Judge*:

In December 2022 and April 2023, the Complainant filed a complaint and supplemental papers 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 filed a civil rights lawsuit in 2020 alleging discrimination in the provision of shelter services. The defendants (a city and certain of its employees) moved to dismiss, arguing that the Complainant’s claims were barred by a release he had signed in connection with the settlement of a previous

lawsuit. A magistrate judge recommended granting the motion, and in 2022 the Judge adopted that recommendation and dismissed the case. In the order adopting the recommendation, the Judge described the Complainant as a “serial litigant,” and in a footnote cited 11 other lawsuits the Complainant had filed in the district in which the Judge presides.

The misconduct complaint states: “My complaint is about what [the Judge] called me in his order. Judge called me a ‘serial’ litigant . . . which I was very [disturbed] by, and I found very offensive especially if he is meaning like a Serial Killer or Serial Rapist and with my Mental Illness, I found this type of language very traumatizing to me. I’m no serial nothing.” The Complainant continues that he feels less confident in the court system since being called a “serial” litigant, and states that “I feel that me being called a Serial litigant by a federal judge and having it on official documents in court where the public can access it at any time will hurt any prior cases I submit in court.” He concludes that the Judge was “very disrespectful and bias[ed].”

In a supplemental filing, the Complainant states (1) he is working with The Legal Aid Society on a new lawsuit against a police department, and (2) a federal

judge in 2007 acquitted him of three criminal charges. These facts, he states, are further evidence that he is not a serial litigant.

DISCUSSION

The complaint is dismissed.

The gravamen of the complaint is that the Judge's description of the Complainant as a "serial litigant" was a personal attack or unnecessarily offensive. But a judge's choice of language will not be second-guessed in a misconduct proceeding if the language was "relevant to the case at hand." *See* Rule 4 cmt. ("If the judge's language was relevant to the case at hand—for example, a statement that a claim is legally or factually "frivolous"—then the judge's choice of language is presumptively merits-related and excluded, absent evidence apart from the ruling itself suggesting an improper motive.")

Here, the Judge's choice of language was unquestionably relevant; the Judge described the Complainant as a "serial" litigant—i.e., someone who has frequently litigated in federal court—in the context of explaining that the Complainant had more experience in federal court than the average *pro se* litigant, which tended to show that he understood that the release he had signed

in the previous case barred his claims in the current case. Because the Judge's language was relevant to the matter he was required to decide, and there is no allegation or indication of improper motive, the allegation 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); Rule 4 cmt.

The allegation that the Judge was biased is derivative of the merits-based allegation, but to the extent it is separate, it is dismissed as "lacking sufficient evidence to raise an inference that misconduct has occurred." Rule 11(c)(1)(D). The Complainant provides no evidence to support this claim apart from the Judge's ruling against him, but rulings 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.