

22-90227-jm
September 8, 2023
Chief Judge

**JUDICIAL COUNCIL OF THE
SECOND CIRCUIT**

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In re
CHARGE OF JUDICIAL MISCONDUCT Docket No. 22-90227-jm

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DEBRA ANN LIVINGSTON, *Chief Judge*:

In November 2022, the Complainants 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

One of the Complainants is a physician whose medical license was revoked in 2014 after he was found to have performed surgeries without proper training and experience, which, the relevant medical board found, constituted gross negligence and malpractice. Since then, he has filed at least ten lawsuits, and perhaps more, in jurisdictions around the country asserting that a cabal of

politically connected neurosurgeons, lawyers, hospitals, and public officials conspired to deprive him of his medical license. It appears that these lawsuits were either dismissed or voluntarily withdrawn, and that none has resulted in relief for the Complainant.

In 2021, the Complainant and his co-Complainant here, who also purports to be a physician, filed a pro se complaint against various stock exchange holding companies, banks, insurance companies, medical boards and officials, public officials, law firms, lawyers, doctors, and hospitals, generally asserting claims under RICO, 42 U.S.C. § 1983, the Sarbanes-Oxley Act, and the United Nations Declaration of Human Rights. The case was assigned to the Judge, who in 2022 dismissed the complaint for failure to state a claim and improper venue. The Judge also barred one of the Complainants from filing further lawsuits arising from the same set of facts.

The day after judgment was entered dismissing the complaint, the Complainants filed a letter on the docket, requesting that the Judge provide them with (1) copies of his financial disclosure reports since 2020, and (2) “a list of all ex parte communications between yourself and any agents acting on your behalf, and the Defendants or any agents acting on their behalf, that

pertains/relates/refers/references or are in any way associated with . . . the delivery and or receipt of any favor/gift/benefit/advantage interest to you and or any member of your family . . . by the Defendants and or their agents in return for granting their motions.” The letter also referred to a series of articles that have appeared in *The Wall Street Journal* relating to the financial disclosures of federal judges. It does not appear that the Judge was mentioned in those articles, but the Complainants appear to have concluded that the Judge must have had financial conflicts because it had been reported that other judges had such conflicts.

The Complainants then filed a document stating that an algorithm developed by “one of the nations’ largest litigation funders” had identified their case as “strong and winnable,” which was “at complete odds” with the Judge’s decision. The Complainants concluded that the Judge must have had a financial interest in the outcome of their case, and ruled against them to “increase the value of his investment portfolio.” The docket does not reflect that the Judge or any party responded to the Complainants’ filings; this misconduct complaint followed.

The misconduct complaint reiterates the allegations described above. The Complainants allege generally that the Judge was either accepting bribes or had a financial interest in the outcome of their case, and that he is generally biased in favor of corporations. The complaint refers to the series of articles in *The Wall Street Journal* noted above, in which it was reported that some federal judges erroneously presided over matters in which they owned stock in one of the parties and from which they should have recused. The Complainants do not directly allege or provide evidence that the Judge actually owned stock in any entity that was involved in their case; they rather surmise that an investigation would likely reveal as much, because there is no other explanation as to why the Judge would have ruled against them.

DISCUSSION

The complaint is dismissed.

To the extent the misconduct complaint is intelligible, it alleges some combination of the following: (1) the Judge accepted bribes from the defendants, (2) the Judge had an undisclosed financial interest in the outcome of the Complainants' case, (3) the Judge should have recused because he owned stock in one or more of the defendants in the Complainants' case, or (4) the Judge is

generally biased in favor of corporations. Regardless of how the claim is framed, 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 these claims apart from the Judge’s ruling against them, but rulings for or against a party, without more, are not evidence of bribery, bias, or an undisclosed financial interest. *See In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability*, 591 F.3d 638, 646 (U.S. Jud. Conf. Oct. 26, 2009) (“Rule 6(b) makes clear that the complaint must be more than a suggestion to a Chief Judge that, if [s]he opens an investigation and the investigating body looks hard enough in a particular direction, [s]he might uncover misconduct. It must contain a specific allegation of misconduct supported by sufficient factual detail to render the allegation credible”).

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