

22-90228-jm  
September 8, 2023  
Chief Judge

**JUDICIAL COUNCIL OF THE  
SECOND CIRCUIT**

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In re  
CHARGE OF JUDICIAL MISCONDUCT                      Docket No. 22-90228-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 district judge (the “Judge”) of this Circuit with misconduct.

**BACKGROUND**

In 2018, the Judge was assigned a matter in which the petitioner, a citizen of Italy, alleged that the mother of his two-year-old son had wrongfully taken the child to the United States. In 2019, the Judge presided over a 9-day bench trial and ordered the return of the child to Italy. In so doing, the Judge detailed the father’s significant history of domestic violence and found that the child faced a

grave risk of harm if returned to Italy in light of that history, but concluded that the Hague Convention nonetheless required the child's return because certain ameliorative measures would sufficiently reduce the risk of harm. The court of appeals vacated that order and remanded for consideration of additional ameliorative measures. The Judge then imposed new ameliorative measures, and the court of appeals affirmed. The Supreme Court, however, granted certiorari, vacated the judgment of the court of appeals, and remanded the case for further proceedings.

In 2022, a few months after the Supreme Court had ruled, the mother of the child was, according to news reports, found dead in her apartment. It appears that an investigation into the cause of death has not been resolved. The case, which has now been remanded, is pending before the Judge.

The misconduct complaint, filed shortly after the mother of the child died, alleges that the Judge "aided and abetted in the death" of the mother, "went against the ruling of the Supreme Court," and that she "could not accept that her judgment [was] overturned by the Supreme Court and she put an abused woman and her young child in harm's way." The complaint asks that the Judge be "disbarred and prevented from taking on cases regarding domestic violence

and child protection.” The Complainant provides her name but does not clarify what, if any, relationship she has to the parties in the matter described above.

## DISCUSSION

The complaint is dismissed.

The death of the mother of the child is undeniably a tragedy, but there is no indication that the Judge committed misconduct. To the extent the complaint alleges that the Judge erred either by ordering the return of the child or by failing to impose sufficient ameliorative conditions, the claim is that the Judge got it wrong, not that she engaged in misconduct. Accordingly, the claim 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.

The allegation that the Judge intentionally ignored the law is derivative of the merits-related allegations, but to the extent this allegation is separate, it is dismissed as “lacking sufficient evidence to raise an inference that misconduct has occurred.” Rule 11(c)(1)(D). An allegation that a judge deliberately disregarded prevailing legal standards “must identify clear and convincing evidence of willfulness, that is, clear and convincing evidence of a judge’s arbitrary and intentional departure from prevailing law based on his or her disagreement with, or willful indifference to, that law.” *In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability*, 517 F.3d 558, 562 (U.S. Jud. Conf. 2008). This standard “ensure[s] that misconduct proceedings do not intrude upon judicial independence by becoming a method to second-guess judicial decisions.” *Id.* The Judge’s decisions in this case may have been reversed, but the matter under consideration is complex and there is nothing to indicate that the Judge has habitually refused to adhere to the judgments of higher courts. *Id.* (noting that “the conduct must be virtually habitual to support the required finding”).

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