

23-90045-jm
January 24, 2024
Chief Judge

**JUDICIAL COUNCIL OF THE
SECOND CIRCUIT**

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In re
CHARGE OF JUDICIAL MISCONDUCT Docket No. 23-90045-jm

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DEBRA ANN LIVINGSTON, *Chief Judge*:

In July 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 magistrate judge (the “Judge”) of this Circuit with misconduct.

BACKGROUND

The Complainant is the plaintiff in a pending employment discrimination lawsuit that has been referred to the Judge for general pretrial purposes. This is the third complaint of judicial misconduct that the Complainant has filed arising from this case, and the second against this magistrate judge. The procedural

history is described in the orders¹ dismissing the Complainant's prior complaints, and familiarity with those orders is assumed.

As relevant here, after twice being provided with court-appointed counsel, the Complainant is now representing herself. In June 2023, the Judge granted a defense motion to quash one of the Complainant's subpoenas, and denied the Complainant's motion to compel. The next day, the Complainant moved for the Judge's recusal based on the Judge's "outrageous decisions based on fraudulent misrepresentations and distortions of law, rules, and facts." The Judge denied the recusal motion about one week after it was filed.

The misconduct complaint is similar to the Complainant's prior complaints; i.e., it is rambling and contains numerous allegations of purported misconduct. It alleges, for example: (1) the Judge's rulings "lack specificity or legal argument"; (2) the Judge "has issued orders in contempt of the law, facts, and evidence"; (3) the Judge misinterpreted the federal rules of civil procedure when denying the Complainant's motion to compel and granting the defense's motion to quash; (4) the Judge is biased in favor of the defendants, as evidenced by her rulings on various pretrial motions; (5) the Judge is "disabled to follow

¹ See 22-90047-jm; 22-90048-jm.

processes and laws,” as evidenced by her allegedly erroneous rulings; and (6) the Judge is “an accessory of Defendants’ fraud on or upon the Court.”

The complaint is dismissed largely for the reasons given in the order dismissing the Complainant’s prior complaints. That is, to the extent the Complainant challenges the Judge’s decision not to recuse and her other rulings on pretrial matters, and to the extent the Complainant alleges that the Judge is disabled as evidenced by her allegedly erroneous rulings, the claims are 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). And to the extent the Complainant alleges that the Judge is biased as evidenced by rulings the Complainant regards as wrong, the claims are dismissed as “lacking sufficient evidence to raise an inference that misconduct has occurred.” Rule 11(c)(1)(D). Rulings for or against a party, without more, are not evidence of bias.

As noted, the Complainant has now filed three complaints of judicial misconduct, against two different judges, all arising from the same underlying case. She is warned that further abuse of the judicial misconduct complaint

process may result in the imposition of restrictions or conditions on its use. *See* Rule 10(a) (“A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints.”).

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