

23-90026-jm, 23-90028-jm  
December 5, 2023  
Chief Judge

**JUDICIAL COUNCIL OF THE  
SECOND CIRCUIT**

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In re

CHARGES OF JUDICIAL MISCONDUCT

Docket Nos. 23-90026-jm  
23-90028-jm

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DEBRA ANN LIVINGSTON, *Chief Judge*:

Between March and May 2023, the Complainant filed two complaints 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 two district judges (“Judge 1” and “Judge 2”) of this Circuit with misconduct.

**BACKGROUND**

In 2018, after the Complainant had filed dozens of lawsuits in the district in which the judges preside, Judge 1, who at the time was chief judge, enjoined the Complainant from filing additional documents of any kind without prior

authorization from Judge 1 or his designee. From 2018 to 2022, Judge 1 denied several of the Complainant's requests to file new complaints or other documents. In 2022, Judge 1 completed his term as chief judge and the Complainant's matters were reassigned to Judge 2, who had become the new chief judge. Since then, Judge 2 has denied the Complainant's requests to file additional documents.

The misconduct complaints and supplemental papers, to the extent they are decipherable, appear to challenge the merits of either Judge 1's filing injunction or the Judges' denials of the Complainant's requests to file new documents. The Complainant alleges, for example, that the judges are "refusing to take me to court" and "constantly delaying my court business." The Complainant notes that the filing injunction contained an exception that allowed him to file documents to defend himself in criminal proceedings, and appears to assert, or at least imply, that the Judges' denials of his various requests are hindering his ability to defend himself in his criminal case.

## **DISCUSSION**

The complaints are dismissed.

The gravamen of the complaints is that the Judges erred either by enjoining the Complainant in the first place or by denying his subsequent requests for permission to file additional documents. These are claims that the Judges got it wrong, not that they engaged in misconduct. Accordingly, 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). 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 filing injunction or the Judges’ various decisions since the filing injunction, he may do so, to the extent the law allows, only through normal appellate procedures.

The Complainant has now filed at least seven complaints of judicial misconduct.<sup>1</sup> He is warned that further abuse of the judicial conduct complaint process may result in the imposition of restrictions or conditions on its use. *See*

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<sup>1</sup> *See* 10-90110-jm, 10-90121-jm, 18-90034-jm, 18-90035-jm, 18-90057-jm.

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 Judges.