

23-90022-jm  
January 22, 2024  
Chief Judge

**JUDICIAL COUNCIL OF THE  
SECOND CIRCUIT**

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In re  
CHARGE OF JUDICIAL MISCONDUCT                      Docket No. 23-90022-jm

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DEBRA ANN LIVINGSTON, *Chief Judge*:

Between March 2023 and January 2024, the Complainant filed a complaint and five supplemental complaints 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 2013, a grand jury in the Southern District of Florida returned an indictment charging the Complainant and several co-defendants with mail and wire fraud. The case was subsequently transferred to a district within this Circuit.

In 2015, the case was reassigned to the Judge, who presided over a jury trial resulting in the conviction of the Complainant and several of his co-defendants. After he was convicted—but before he was sentenced—the Complainant moved for a new trial, arguing, among other things, that his trial counsel had been ineffective. The Judge presided over a hearing at which the Complainant and his trial counsel testified. The Judge ultimately denied the Complainant’s post-trial motions, finding that trial counsel had not been ineffective. In 2017, the Judge sentenced the Complainant to 36 months’ imprisonment, and in 2018 the Second Circuit affirmed the Complainant’s conviction and sentence. The Complainant completed the custodial portion of his sentence in 2021.

In 2020, while still incarcerated, the Complainant filed a motion to vacate under 28 U.S.C. § 2255, again arguing that his trial counsel had been ineffective. He then sought to add additional claims of prosecutorial misconduct, alleging that prosecutors knowingly introduced false testimony. The gravamen of the Complainant’s allegations was that cooperating witnesses had lied during his trial, and the prosecutors knew the witnesses were lying. While the Section 2255 motion was pending, the Complainant submitted supplemental filings, including

a January 2022 “supplemental motion to vacate” and a February 2022 “motion to repeal the restitution order,” as well as several letters urging the Judge to “exonerate” him because “over exuberant” prosecutors had “coerced” witnesses into giving false testimony. In November 2022, the Judge denied the Section 2255 motion “and all of [the Complainant’s] subsequent motions and requests” in a written opinion.

The misconduct complaint essentially challenges the Judge’s denial of the Section 2255 motion and other post-trial motions. The Complainant lists several motions the Judge denied and re-argues them, claiming that he should have been acquitted and that he established “beyond a reasonable doubt” that the prosecutor knowingly violated Supreme Court precedent. He further argues that the Judge (1) “ignore[ed] the new evidence presented to the Court”; (2) “ignore[ed] violations of a Supreme Court decision, and ignore[ed] the civil rights of the Petitioner”; (3) was motivated by a desire to “protect[] a Government employee [i.e., a member of the prosecution team] who had committed criminal and unethical acts”; (4) was biased and prejudiced against him, as evidenced by the Judge’s denial of his motion to vacate; and (5) erred by failing to treat his supplemental filings as a petition for writ of error coram nobis.

The Complainant's supplemental filings are of a similar nature. The Complainant alleges that the Judge obstructed justice by failing to report the prosecutors' alleged crimes to the appropriate branch of the Department of Justice, and by failing to interpret the Complainant's filings as a petition for writ of error coram nobis. The Complainant points out that Article III, Section 1 of the Constitution provides that federal judges "shall hold their offices during good behavior," and he suggests that the Judge should be suspended or removed from the bench because his allegations establish what he describes as "bad behavior."

### **DISCUSSION**

The complaint is dismissed.

An allegation that a judge, in reaching a decision, neglected to consider fully all arguments presented, failed to comprehend the meaning or import of certain statutes or cases, or disregarded certain key facts or witnesses is merely challenging the correctness of the judge's decision. Similarly, an allegation that the result of the judge's decision itself evidences a mental disability or a bias in favor of the prevailing party is also merely an attack on the correctness of that decision. In other words, what such allegations contend is that the judge got it wrong, not that the judge engaged in judicial misconduct.

The allegations here follow this pattern. The allegations that the Judge erred by [i] denying the Complainant's various motions, including his motion to vacate under 28 U.S.C. § 2255, [ii] misapplying Supreme Court precedent, or [iii] failing to construe the Complainant's filings as a petition for writ of error coram nobis seek merely to challenge the correctness of the Judge's decisions.

Accordingly, these allegations 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 Judge's denials of his various post-

conviction motions, he may do so, to the extent the law allows, only through

normal appellate procedures.

The allegation that the Judge did not just err but that the Judge intentionally disregarded the law to protect prosecutors who the Judge knew

had suborned perjury appears entirely derivative of the merits-related charges; but to the extent it is separate, it is wholly unsupported and therefore 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 denials of his post-trial motions, but decisions for or against a party, without more, are not evidence of collusion or cooperation between the Judge and the prosecution.

Similarly, the allegation that the Judge was biased or prejudiced against the Complainant is also dismissed as “lacking sufficient evidence to raise an inference that misconduct has occurred.” Rule 11(c)(1)(D). The Complainant cites no evidence to support the allegations of bias apart from the Judge’s denials of his motions, 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.