

23-90018-jm  
January 26, 2024  
Chief Judge

**JUDICIAL COUNCIL OF THE  
SECOND CIRCUIT**

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In re  
CHARGE OF JUDICIAL MISCONDUCT                      Docket No. 23-90018-jm

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DEBRA ANN LIVINGSTON, *Chief Judge*:

In February and August 2023, the Complainant filed a complaint 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 a district judge (the “Judge”) of this Circuit with misconduct.

**BACKGROUND**

In 2014, the Complainant, representing himself, filed an employment discrimination lawsuit. The Judge dismissed the complaint sua sponte and ordered the Complainant to show cause why he should not be barred from future filings due to his history of vexatious lawsuits. The Complainant

responded, and the Judge then entered an order barring him from filing additional lawsuits without prior permission. In 2015, the court of appeals dismissed the Complainant's appeal as untimely, and in 2016 the court of appeals denied the Complainant's mandamus petition.

The misconduct complaint, filed in February 2023 about 7 years after the events summarized above, alleges that the Judge (1) showed a "lack of respect for binding precedent" by dismissing the complaint; (2) "fail[ed] to obey the Daubert's precedent," which "constitutes misconduct"; (3) "failed to construe the complaint liberally because of complainant's national origin"; (4) "failed to construe evidence of fraudulent concealment because of judicial bias towards complainant's national origin"; (5) "failed to evaluate the evidence of deprivation of Equal Protection Clause . . . because of bias towards complainant's national origin"; (6) "humiliated and harassed" the Complainant by barring him from filing future lawsuits; and (7) "harassed" the Complainant by declining to grant an extension of time in which to appeal.

The Complainant also alleges that the Judge "fabricated" an order entered in February 2015. The Complainant points out that the February 2015 order refers to a January 2015 order, but there is no order on the docket issued in

January 2015 and, if one was issued, the Complainant did not receive it. From this, the Complainant surmises that the Judge's "mental ability of decision making capability is questionable."

The August 2023 supplemental filing largely reiterates many of these arguments. The Complainant alleges, among other things, that the Judge (1) committed "fraud upon the Court" by finding that the Complainant's scientific evidence was speculative; (2) "lacked authority to review scientific evidence"; (3) was biased against the Complainant based on his national origin, as evidenced by the Judge barring the Complainant from filing future lawsuits; and (4) failed to follow binding precedent. The Complainant also alleges that all of the Judge's orders are "void" because they were entered "in the absence of jurisdiction or authority."

## **DISCUSSION**

The complaint is dismissed.

Most of the Complainant's allegations—including that the Judge failed to follow precedent, did not construe the complaint liberally, misevaluated the evidence of fraudulent concealment and equal protection violations, misunderstood the Complainant's purportedly scientific evidence, entered an

order in the absence of jurisdiction, and erroneously barred the Complainant from filing future actions—are claims that the Judge got it wrong, not that she engaged in misconduct. 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 various orders, including the order barring him from filing future lawsuits without prior permission, he may do so, to the extent the law allows, only through normal appellate procedures.

The allegation that the Judge was biased against the Complainant due to his national origin 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 this claim apart from decisions he regards as

incorrect or unfavorable, but decisions for or against a party, without more, are not evidence of bias.

As to the allegation that the Judge “fabricated” an order, and that the alleged fabrication is evidence that the Judge is suffering from a mental disability, the Complainant appears to be correct that the February 2015 order contains a typographical error: it refers to a January 2015 order, but there is no such order on the docket, and the Judge most likely intended to refer to an August 2014 order. But the claim is nonetheless dismissed as “lacking sufficient evidence to raise an inference that misconduct has occurred.” Rule 11(c)(1)(D). One typographical error, eight years ago, does not suggest that the Judge’s decision-making capabilities are “questionable,” as the Complainant alleges. *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 Complainant  
and to the Judge.