

22-90047-jm, 22-90048-jm
September 28, 2022
Chief Judge

**JUDICIAL COUNCIL OF THE
SECOND CIRCUIT**

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In re

CHARGES OF JUDICIAL MISCONDUCT

Docket Nos. 22-90047-jm
22-90048-jm

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DEBRA ANN LIVINGSTON, *Chief Judge*:

On May 16, 2022, the Complainant filed two 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 magistrate judge and a district judge of this Circuit with misconduct.

BACKGROUND

In July 2020, the Complainant, proceeding pro se, filed a lawsuit against her former employer alleging various forms of employment discrimination. The case was assigned to the district judge, who in early September 2020 scheduled a

pre-motion conference for October 2020. The Complainant thereafter moved for appointment of counsel and requested an interpreter at the conference; the district judge denied the motion for appointment of counsel without prejudice, canceled the conference, and denied the request for an interpreter as moot (since the conference had been canceled). But in November 2021, the district judge, after having denied the defendants' motion to dismiss in part, reconsidered the decision as to appointment of counsel and directed that a lawyer be appointed for the Complainant.

Shortly thereafter, the matter was referred to the magistrate judge to preside over pretrial matters. The magistrate judge scheduled a conference for February 2022 but canceled the conference a few days before it was to have occurred after the parties filed a joint case management statement and the magistrate judge deemed the conference unnecessary. The Complainant then requested a different attorney, stating that the attorney who had been appointed for her had permitted documents to be filed that she (the Complainant) had not first viewed and approved, which allegedly breached an agreement she had reached with her attorney. The magistrate judge relieved the Complainant's attorney but denied the request for appointment of substitute counsel without

prejudice. The Complainant sought reconsideration of that order, requesting “bilingual pro bono counsel,” which the magistrate judge also denied. The magistrate judge has continued to preside over discovery, and the case is pending.

The misconduct complaints are rambling, but generally relate to the judges’ management of the case and their decisions on the motions described above. Complaint number 22-90047 complains that the magistrate judge (1) canceled the conference that had been scheduled for February 2022 just three days before it was to have occurred, which allegedly violated the Complainant’s due process rights; (2) erred by refusing to strike the parties’ joint case management statement, which, the Complainant alleges, her lawyer filed without her permission; (3) wrongly denied her substitute counsel, and her request for bilingual counsel; (4) has failed to appreciate the Complainant’s arguments that the defendants have been producing false documents and putting forth false testimony; and (5) “never applied judicial estoppel doctrine to avoid the Defendants’ cynical and outrageous behavior toward the Court . . . that I have exposed with evidence.” These examples are intended to be illustrative; there are more allegations of this nature. The Complainant also

alleges that the magistrate judge is biased against her because she (the Complainant) is Hispanic, a woman, and proceeding pro se.

Complaint number 22-90048, against the district judge, is similar. The Complainant alleges that the defendants have engaged in unethical behavior by wrongly impugning the Complainant and attempting to characterize her as “delusional,” and that the district judge (1) “never penalized the Defendants for lying in their pleadings, filing false documentation, and false witness testimony”; (2) “never applied the Estoppel principle”; (3) “never warned or punished [the] Defendants’ outrageous behavior despite my objections”; and (4) erred by appointing an attorney for the Complainant who was not bilingual. Again, these examples are intended to be illustrative. The Complainant also alleges that the district judge is biased against her because she is Hispanic, a woman, and pro se.

DISCUSSION

The complaints are dismissed.

The gravamen of the complaints is that the judges have mismanaged the case and committed various procedural and substantive errors, including by canceling conferences with insufficient notice, appointing an attorney who is not bilingual to represent the Complainant, declining to chastise or sanction defense

counsel for what the Complainant believes to be dishonest or unethical conduct, refusing or neglecting to remove documents from the docket, and wrongly applying what the Complainant refers to as the “estoppel doctrine.” These are claims that the judges got it wrong, not that they committed judicial misconduct. Accordingly, the 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. The Complainant may pursue challenges to the judges’ rulings and case management decisions, to the extent the law allows, only through normal appellate procedures.

The claims that the judges are biased against the Complainant because she is Hispanic, a woman, and proceeding pro se are 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 allegation of bias apart from decisions she regards as incorrect or unfavorable, but rulings for or against a party, without more, are not evidence of bias. Nor are several such rulings.

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