

21-90142-jm, 21-90143-jm  
October 31, 2023  
Judicial Council

**JUDICIAL COUNCIL OF THE  
SECOND CIRCUIT**

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In re

CHARGE OF JUDICIAL MISCONDUCT

Docket Nos. 21-90142-jm  
21-90143-jm

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Before the Judicial Council of the Second Circuit:

On November 19, 2021, a complaint was identified alleging misconduct on the part of a Chief Circuit Judge and District Judge of another circuit (the “Subject Judges”). The complaint was transferred to the Judicial Council of this Circuit on December 9, 2021, and was dismissed on December 22, 2021, by the Chief Judge of this Circuit. That dismissal was affirmed by the unanimous vote of the Judicial Council on January 13, 2022.

On July 8, 2022, the Judicial Conference’s Committee on Judicial Conduct and Disability (the “JC&D Committee”) issued a *sua sponte* decision returning the matter to the Second Circuit Judicial Council with directions to appoint a special committee and to undertake specific investigatory steps.

On July 15, 2022, the Judicial Council received briefing from the Subject Judges. (The Subject Judges had no opportunity to submit briefing to the JC&D Committee.) The Subject Judges argued that the JC&D Committee had exceeded its authority in directing both the appointment of a special committee and additional inquiry into the complaint. The relevant statute provides that a judicial council’s order affirming a chief judge’s dismissal order under Section 352(b) is

“final and conclusive and shall not be judicially reviewable on appeal or otherwise.”<sup>1</sup> 28 U.S.C. § 352(c); *see also* § 357(c).

In light of the significant question raised by the Subject Judges as to the statutory authority of the JC&D Committee to issue its July 8, 2022, directive, the Second Circuit Judicial Council voted unanimously to seek guidance from the Judicial Conference of the United States. On June 28, 2023, the Judicial Council received such guidance from the Executive Committee, acting on behalf of the Judicial Conference.

Having reviewed the Executive Committee’s guidance as to the scope of this Council’s discretion and consistent with this guidance, the Judicial Council unanimously declines to reconsider the Council’s order of January 13, 2022.

The Clerk is directed to transmit copies of this order to the Subject Judges.

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<sup>1</sup> Rule 21(b)(2) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, on which the JC&D Committee relied, permits that committee, “[a]t its initiative and in its sole discretion,” to review orders issued under Section 352(b) “to determine whether a special committee should be appointed.” The Subject Judges argued that “any reading of Rule 21(b)(2)” that would authorize the JC&D Committee to order the Judicial Council to act “conflicts with §§ 357(c) and 352(c).”