

JUL 20 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 18-90052

ORDER

THOMAS, Chief Judge:

Complainant, a litigant in a civil case, has filed a complaint of judicial misconduct against a magistrate judge. Review of this complaint is governed by the Rules for Judicial Conduct and Judicial-Disability Proceedings (“Judicial-Conduct Rules”), the federal statutes addressing judicial conduct and disability, 28 U.S.C. § 351 et seq., and relevant prior decisions of the Ninth Circuit Judicial Council. In accordance with these authorities, the names of complainant and the subject judge shall not be disclosed in this order. See Judicial-Conduct Rule 11(g)(2).

The Judicial Conduct and Disability Act provides a remedy if a federal judge “has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts.” 28 U.S.C. § 351(a). A chief judge may dismiss a complaint if, following review, he or she finds it is not cognizable under the statute, is directly related to the merits of a decision or procedural ruling,

or is frivolous or lacks sufficient evidence to raise an inference of misconduct.

See 28 U.S.C. §§ 352(b)(1)(A)(i)-(iii). Judicial misconduct proceedings are not a substitute for the normal appellate review process, and may not be used to seek reversal of a judge's decision, to obtain a new trial, or to request reassignment to a different judge.

First, complainant alleges that the judge made incorrect evidentiary rulings, allowed an improper line of questioning, did not give complainant an adequate opportunity to testify, denied a reasonable accommodation, and made various other improper rulings in the underlying proceedings. These allegations relate directly to the merits of the judge's rulings and must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982); Judicial-Conduct Rule 11(c)(1)(B).

Next, complainant alleges that the judge accused her of perjury, allowed jurors to sleep during trial, and allowed the judge's husband to sit at opposing counsel's table. Complainant does not indicate whether any of these matters were brought to the court's attention, nor does she offer any proof or citation to the record in support of these allegations. Moreover, a review of the trial transcripts reveals no instances of misconduct. Accordingly, these allegations are dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial

Misconduct, 650 F.3d 1370, 1372 (9th Cir. Jud. Council 2011) (rejecting complainant’s “invitation for the Judicial Council to conduct a fishing expedition” and explaining that “vague accusations and convoluted demands don’t satisfy complainant’s obligation to provide objective evidence of misconduct”); In re Complaint of Judicial Misconduct, 569 F.3d 1093 (9th Cir. Jud. Council 2009) (“complainant’s vague insinuations do not provide the kind of objectively verifiable proof that we require”); Judicial-Conduct Rule 11(c)(1)(D).

Finally, complainant alleges that the judge was not fully engaged at trial, was distracted by an upcoming wedding, and made several irrelevant comments about the wedding. This allegation is belied by the record. A review of the relevant transcript shows that the judge asked whether proceedings could adjourn early so that the judge could officiate a wedding, and counsel for both sides agreed. Later in the same hearing, the court noted that she expected counsel to treat each other with civility, that counsel for both sides would be disappointed with some of her rulings, and that her job “is not to make people happy, unfortunately . . . Except for the wedding I’m going to.” These remarks were entirely proper, and the record belies complainant’s allegations that the judge was inattentive, made improper comments, or otherwise engaged in misconduct. Accordingly, these allegations must be dismissed as unfounded and for failure to

allege misconduct. See 28 U.S.C. § 352(b)(1)(A)(iii), (B); In re Complaint of Judicial Misconduct, 726 F.3d 1060, 1062 (9th Cir. Jud. Council 2013) (“Because complainant’s charges wouldn’t constitute misconduct even if true, the complaint is dismissed as groundless”); In re Complaint of Judicial Misconduct, 647 F.3d 1181, 1182 (9th Cir. Jud. Council 2011) (“Because complainant doesn’t allege conduct ‘prejudicial to the effective and expeditious administration of the business of the courts,’ her charges must be dismissed”); In re Complaint of Judicial Misconduct, 583 F.3d 598 (9th Cir. Jud. Council 2009); Judicial-Conduct Rules 11(c)(1)(A), (D).

DISMISSED.