

FILED

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 18-90028

ORDER

THOMAS, Chief Judge:

Complainant, a pro se litigant, 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.

Complainant alleges that the magistrate judge made improper rulings in her civil case, including denying her motions for the appointment of counsel and failing to sanction opposing counsel. These charges relate directly to the merits of the judge's rulings and must therefore 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).

Complainant further alleges that, despite knowing that she was disabled, the judge sternly told her to "stand up" in court during a hearing. A limited inquiry was conducted, and an audio recording from the hearing was reviewed. After complainant advised the judge that she could not hear opposing counsel very well, the judge asked opposing counsel to speak more loudly into the microphone. The judge then asked whether complainant could hear opposing counsel, and she responded with a faintly heard "mm hmm," apparently from plaintiff's table. The judge then said, in a calm and professional tone, "when you address the court, you need to stand up." Apparently then complainant attempted to stand, and the judge

took note that she was having trouble, and so stated, “Are you not able to stand up? You may remain seated.” Complainant responded “No. I want to do it the way it is supposed to be done.” The judge then stated “OK, well that is fine, but if you start to wear out or something, let me know,” and minutes later reminded her “you don’t need to stand up.” This allegation is dismissed as unfounded and conclusively refuted by objective evidence. See 28 U.S.C. § 352(b)(1)(A)(iii), (B); In re Complaint of Judicial Misconduct, 583 F.3d 598 (9th Cir. Jud. Council 2009); Judicial-Conduct Rule 11(c)(1)(D).

Complainant also alleges that the judge was biased due to her disability, and showed favoritism towards opposing counsel. However, adverse rulings alone are not proof of bias, and complainant provides no objectively verifiable evidence to support this allegation, which must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 583 F.3d 598 (9th Cir. Jud. Council 2009); Judicial-Conduct Rule 11(c)(1)(D).

Finally, complainant alleges that court staff was rude to her when complainant appeared for a hearing that had been cancelled without notice to her, and apparently court staff had failed to docket the cancelled hearing. Complainant previously wrote to the chief district judge about that experience, and the clerk of court from the district responded with an apology to complainant. To the extent

complainant raises allegations against clerks or other court staff, these allegations are dismissed because this misconduct complaint procedure applies only to federal judges. See In re Complaint of Judicial Misconduct, 632 F.3d 1287, 1288 (9th Cir. Jud. Council 2011); Judicial-Conduct Rule 4.

DISMISSED.