

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. 18-90040

ORDER

THOMAS, Chief Judge:

Complainant, a pro se litigant in a civil case, has filed a complaint of judicial misconduct against a district judge of this Circuit. 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.

The majority of complainant's allegations involve conduct that occurred years before the judge joined the federal bench, while she was in private practice and represented an opposing party. As such, these allegations must be dismissed as non-cognizable. See 28 U.S.C. §§ 351(d)(1), 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 715 F.3d 747, 749 (9th Cir. 2013) ("as we have previously held, it would be improper 'to sanction a judge for conduct preceding confirmation' to the federal bench"); In re Complaint of Judicial Misconduct, 570 F.3d 1144 (9th Cir. 2009), as corrected (June 26, 2009) ("The bulk of complainant's allegations involve the judge's rulings as a state court judge in the earlier proceeding. Because the plain language of the Judicial Conduct and Disability Act limits its scope to conduct by federal judicial officers . . . these allegations must be dismissed"); Judicial-Conduct Rule 4.

Complainant further alleges that the judge is an "utter liar" and a "sociopath." However, complainant offers no proof in support of these vague and

conclusory allegations, which are dismissed as unfounded. 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); In re Complaint of Judicial Misconduct, 569 F.3d 1093 (9th Cir. Jud. Council 2009) (“claimant’s vague insinuations do not provide the kind of objectively verifiable proof that we require”); Judicial-Conduct Rule 11(c)(1)(D).

It is noted that several of the exhibits to the misconduct complaint consist of prior email communications from complainant to the subject judge that contain abusive language and profanity. Complainant is cautioned that a “complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints.” Judicial-Conduct Rule 10(a); see also In re Complaint of Judicial Misconduct, 552 F.3d 1146, 1148 (9th Cir. Jud. Council 2009).

DISMISSED.