

FILED

JUN 18 2018

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 18-90048

ORDER

THOMAS, Chief Judge:

Complainant, an attorney 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.

Complainant alleges that the judge made a hostile, "anti-family" comment toward complainant. Specifically, at a pretrial hearing, complainant requested a continuance in order to attend a family event, which the judge granted.

Complainant also requested that a pretrial conference be rescheduled so that complainant could attend a school event with his child. At one point during the ensuing colloquy, the judge remarked, "I'm not your nanny." Ultimately, the judge granted complainant's request to reschedule the pretrial conference.

Pursuant to a limited inquiry under Judicial-Conduct Rule 11(b), the transcript of the subject hearing has been reviewed, and the judge has provided an informal response to the misconduct complaint. A review of the transcript reveals that prior to making the comment, the judge expressed frustration with complainant on various matters regarding standing orders, discovery, and scheduling. In her informal response, the judge explains that she failed to control her frustration with complainant's apparent disregard for deadlines and local rules.

The judge acknowledges that she should have kept her frustration under better control.

Read in context, the judge's comment was not an anti-family statement or a personal attack on complainant, but rather, an expression of frustration with complainant's conduct in the proceedings. This is insufficient to prove bias or other misconduct. See In re Complaint of Judicial Misconduct, 761 F.3d 1097, 1098-99 (9th Cir. Jud. Council 2014) ("Misconduct includes treating litigants or attorneys in a demonstrably egregious and hostile manner The comments here do not meet that standard. The judge did not use demeaning language or heap abuse on anybody. His statements were blunt but measured expressions of frustration with having his orders disregarded by someone in whom he had placed confidence"); In re Complaint of Judicial Misconduct, 579 F.3d 1062, 1064 (9th Cir. Jud. Council 2009) ("The transcript . . . indicates that the judge, while frustrated by the tactics of both parties, remained professional and did not exhibit bias. Allegedly improper statements quoted by complainant were, in context, completely benign"); Larson v. Palmateer, 515 F.3d 1057, 1067 (9th Cir. 2008) ("neither adverse rulings nor impatient remarks are generally sufficient to overcome the presumption of judicial integrity").

Accordingly, because the complaint fails to allege conduct “prejudicial to the effective and expeditious administration of the business of the courts,” these charges are dismissed. See 28 U.S.C. § 351(a); 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”); Judicial-Conduct Rules 3(h), 11(c)(1)(A).

DISMISSED.