

FILED

JUN 20 2019

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 18-90115

ORDER

THOMAS, Chief Judge:

Complainant, a litigant in an employment action, 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 failed to grant default judgment, failed to sanction opposing counsel for alleged discovery violations, and made various other improper rulings in the underlying civil case. 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).

Complainant further alleges that the judge favored defendants and should have recused based on the judge's alleged social relationship with opposing counsel. After a case management conference, complainant states that she overheard opposing counsel advise the judge that she would be calling to set up social plans. Complainant raised this judicial bias issue on appeal, which the Court of Appeals rejected as "without merit." Further, pursuant to a limited inquiry under Judicial-Conduct Rule 11(b), both the judge and opposing counsel denied that the comment was made and also denied that they knew each other

socially. The alleged remarks were not found in the court transcript. Because complainant has failed to establish any extrajudicial bias or prejudice, and makes no showing that the judge failed to recuse for an improper purpose, these charges must be dismissed as merits-related and unfounded. See 28 U.S.C.

§ 352(b)(1)(A)(ii) and (iii); In re Complaint of Judicial Misconduct, 647 F.3d 1181 (9th Cir. Jud. Council 2011); In re Complaint of Judicial Misconduct, 650 F.3d 1370, 1371 (9th Cir. Jud. Council 2011) (“adverse rulings do not prove bias or conspiracy”); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.