

FILED

SEP 23 2019

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 19-90104

ORDER

THOMAS, Chief Judge:

Complainant, a pro se prisoner, has filed a complaint of judicial misconduct against the magistrate judge assigned to his settlement conference in the underlying civil proceedings. 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 treated him in an egregiously hostile manner by making “negative gestures” about his evidence, questioning complainant's challenge to his medical care, and improperly suggesting that complainant should dismiss his action. However, a judge who is assigned to a case solely for settlement purposes is permitted to encourage settlement or express views about the strength of a case. See In re Complaint of Judicial Misconduct, 838 F.3d 1030 (9th Cir. 2016) (“A judge conducting settlement proceedings may meet with the parties separately, may encourage settlement, and may convey a party's offer and acceptance to facilitate the settlement”); see, e.g., N.D. Cal. ADR Local Rule 7-1 (“A settlement Judge might articulate views about the merits of the case or the relative strengths and weaknesses of the parties' legal positions”). In context, the judge's comments were not improper and did not amount to demonstrably egregious or hostile treatment. Accordingly, this allegation is dismissed as unfounded and for failure to allege misconduct. See 28 U.S.C.

§ 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 761 F.3d 1097, 1099 (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”) (internal quotations omitted); 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 Rule 11(c)(1)(A), (D).

Complainant also alleges that the judge has improperly delayed the underlying proceedings. A review of the record indicates that the case has proceeded in due course. Moreover, complainant fails to show or allege that any delay was improperly motivated, or that the judge has habitually delayed ruling in a significant number of unrelated cases. Accordingly, this charge must be dismissed. See In re Complaint of Judicial Misconduct, 584 F.3d 1230, 1231 (9th Cir. Jud. Council 2009); Judicial-Conduct Rule 4(b)(2).

DISMISSED.