

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. 19-90106

ORDER

THOMAS, Chief Judge:

Complainant, a civil 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 judge is an active member of the state bar and has improperly held herself out as an attorney who is available to practice law. It is not misconduct for a federal judge to maintain active state bar membership. See Judicial Conference of the United States, Committee on Codes of Conduct, Compendium of Selected Opinions, § 4.1-3[1](a) (“Federal judges are not required to be members of any bar association; [however,] such membership is permitted, even encouraged; and bar association membership and participation in bar association activities do not constitute the practice of law”). Moreover, complainant offers no evidence that the judge has “held herself out” as a practicing attorney. 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, 583 F.3d 598 (9th Cir. Jud. Council 2009); In re Complaint of Judicial Misconduct, 647 F.3d 1181, 1182 (9th Cir. Jud. Council 2011); Judicial-Conduct Rules 11(c)(1)(A), (D).

Complainant also alleges that the judge made incorrect rulings regarding territorial jurisdiction, and various other incorrect rulings in the underlying 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).

Finally, complainant alleges that the judge continually interrupted him at a hearing and was “disruptive, disingenuous, immoral and unethical.” A review of the record, including the relevant hearing transcript, belies this allegation. The judge allowed complainant an ample opportunity to be heard and did not treat complainant in a “demonstrably egregiously [or] hostile manner.” Judicial-Conduct Rule 4(a)(2)(B). Accordingly, this allegation is dismissed as unfounded. 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); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.