

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. 20-90058

ORDER

THOMAS, Chief Judge:

Complainant, a pro se litigant, has filed a complaint of judicial misconduct against a district 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 district judge exhibited bias against her by delaying ruling on and ultimately denying a motion to shorten time for a status conference. But delay is not misconduct “unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” Judicial-Conduct Rule 4(b)(2). Complainant provides no evidence of improper motive or habitual delay. Additionally, the docket reveals, and the complainant acknowledges, that the judge ruled on the motion. This allegation of bias related to the denial of the motion is directly related to the merits of the case 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 also raises allegations related to an incident where he served the district judge with a document at her home. Complainant alleges that the judge retaliated against complainant for finding her home address and making contact with her there. He alleges that the district judge was upset and retaliated by

sending the Marshals to his residence to threaten him. However, complainant was not home when the Marshals came. Complainant submits a summary of the conversation his neighbors had with the Marshals. The Marshals asked his neighbors to let complainant know that they are attempting to contact him, that complainant is not in trouble, and that they only need approximately 15 minutes of his time. Based on the evidence submitted by complainant, the Marshals did not engage in any threatening behavior. Complainant does not provide any evidence to support his allegation that the district judge sent the Marshals as a form of retaliation. This allegation must be dismissed as non-cognizable and for failure to allege misconduct. See 28 U.S.C. § 352(b)(1)(A)(iii).

Finally, complainant wants the district judge to be impeached. Complainant is involved in another case that was assigned to the district judge. Complainant filed a motion for recusal and the judge recused herself. However, complainant wants the judge to be impeached because of the bias the judge exhibited in denying his motion to shorten time for scheduling order referenced above. Because that allegation is dismissed as merits-related, complainant's allegation that the district judge should be impeached for bias is also dismissed.

DISMISSED.