

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. 20-90059

ORDER

THOMAS, Chief Judge:

Complainant, an attorney, 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 made a public comment in a magazine article about the merits of a pending case regarding patent infringement. Complainant states that this created a perception of impartiality because the judge's comment shows that she did not understand the case or pay attention to the evidence. The judge's comment was provided in the context of describing her duties as a judge. The judge did not mention any parties by name nor did she mention the specific dispute at issue in the patent infringement case. She merely provided examples of the types of cases that she may be assigned. There is no indication that the judge was commenting on the merits of a specific case.

Moreover, the judge issued a lengthy bench order, analyzing the complex and technical evidence presented during trial. This bench order shows that the judge understood the case and paid close attention to the evidence. The allegation that the judge made an improper comment about the merits of a pending action is unsupported by "sufficient evidence to raise an inference that misconduct has occurred." Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.