

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. 20-90069

ORDER

THOMAS, Chief Judge:

A misconduct complaint has been filed 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.

Complainants are a married couple who filed a lawsuit against medical facilities for failing to provide them with an American Sign Language interpreter. Complainants allege that during the court proceedings, the district judge was insensitive to deaf culture by repeatedly referring to complainants as hearing impaired. Complainants point to numerous pleadings in the docket in which the district judge used this term. However, some of these pleadings were filed by plaintiffs themselves and in their Complaint, plaintiffs referred to themselves as hearing impaired multiple times. If the district judge referred to the plaintiffs as hearing impaired, it was simply a reflection of how the plaintiffs described themselves on the record. This allegation is dismissed as non-cognizable and for failure to allege misconduct. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 647 F.3d 1181, 1182 (9th Cir. Jud. Council 2011) (“Because complainant doesn’t allege conduct ‘prejudicial to the effective and expeditious administration of the business of the courts,’ her charges must be dismissed”); Judicial-Conduct Rules 11(c)(1)(A).

Complainants next allege that the district judge yelled at them for using body language in the courtroom. Complainants explain that body language is an important method of communication for the deaf community. Complainants failed to provide further information about this incident. However, upon review of the docket, there is an exchange between the district judge and one of the complainants where the judge informs the complainant that she may not sign in the courtroom to a testifying witness when she is not testifying. Though it is hard to determine whether the judge was yelling or not through a transcript, the judge was polite in how he informed the complainant, and there is no reason to believe that the judge treated complainant in a “demonstrably egregious and hostile manner.”

Judicial-Conduct Rule 3(h)(1)(D); see also 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).

Accordingly, these allegations must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii), (b)(1)(B); In re Complaint of Judicial Misconduct, 726 F.3d 1060, 1062 (9th Cir. Jud. Council 2013); Judicial-Conduct Rule 11(c)(1)(A), (D).

Finally, complainants allege that the district judge made numerous rulings that were erroneous. Complainants provide specific examples such as rulings related to exclusion of certain evidence during trial. 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).

DISMISSED.