

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. 20-90124

ORDER

THOMAS, Chief Judge:

Complainant 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[s] 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 filed a civil rights complaint related to employment discrimination against several companies. Complainant now alleges that the district judge used ridiculing language against him in an order. A review of the record reveals that the judge was simply explaining why it was improper to use a generic name to refer to several different defendants. The language used was not ridiculing complainant by any means, and this allegation is dismissed as refuted by the record. See 28 U.S.C. § 352(b)(1)(B).

Complainant next alleges that the judge deprived him of his basic right to file a first amended complaint before dismissing his case. A review of the docket reveals that complainant filed a first amended complaint and did so before the judge ruled on defendants' motions to dismiss. This allegation is conclusively refuted by objective evidence and must be dismissed. Id.

Complaint also alleges that the judge did not assign a hearing date before or after the settlement agreement, which he claims is evidence that the judge always intended to dismiss the case without providing complainant with "meaningful justice." However, a review of the record reveals that the judge set several

hearings. Some of these hearings were continued or removed from the calendar as is common for nearly all cases. Indeed, the record reveals that some of the scheduling changes were due to complainant's request for an extension of time to file briefs related to a particular hearing. This allegation is contradicted by the record and must be dismissed. Id.

Complainant alleges that the judge improperly approved a settlement agreement which was fraudulent and forced complainant to accept the agreement. Complainant argues that he did not see the entire settlement agreement, and was forced to agree to it after seeing just the signature page. The decision to approve a settlement agreement is 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). Moreover, complainant provides no objectively verifiable evidence that the judge forced him to accept the settlement agreement, and the record contradicts this allegation. The settlement agreement was signed by the parties after mediation, complainant filed a notice of settlement, and the parties filed a joint stipulation to dismiss the case. This allegation must also be dismissed on the ground that it is unfounded. 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); Judicial-Conduct Rule 11(c)(1)(D).

Complainant next alleges that the judge denied his motions, gave unilateral decisions, and harassed him with words. To the extent complainant alleges that the judge improperly denied motions or gave unilateral decisions, those allegations relate to the merits of the case and must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B); In re Complaint of Judicial Misconduct, 579 F.3d 1062, 1064 (9th Cir. Jud. Council 2009). Additionally, a review of the record reveals that the judge granted complainant's multiple requests to extend filing deadlines and even accepted a late filing with only a warning to follow court rules and procedures in the future. The record also reveals that the judge did not use language that could be construed as harassing the complainant and complainant provides no objective evidence in support of this allegation. This allegation is dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 715 F.3d 747, 749 (9th Cir. Jud. Council 2013) (“adverse rulings, standing alone, are not proof of misconduct”)

DISMISSED.