

**FILED**

MAR 16 2021

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

**JUDICIAL COUNCIL  
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF  
JUDICIAL MISCONDUCT**

Nos. 20-90138 and 20-90139

**ORDER**

**THOMAS**, Chief Judge:

Complainant, a pro se litigant, has filed a complaint of judicial misconduct against a district judge and 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[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 alleges that one of the defendant's actions during his civil case did not align with the ethical standards and expectations of a federal court. To the extent complainant raises an allegation against a defendant in her civil case, that allegation is dismissed because this misconduct complaint procedure applies only to federal judges. See In re Complaint of Judicial Misconduct, 632 F.3d 1287, 1288 (9th Cir. Jud. Council 2011); Judicial-Conduct Rule 4.

Complainant next alleges that the magistrate judge misunderstood what complainant was requesting and failed to enter a new discovery plan and scheduling order. To the extent complainant alleges that the magistrate judge's actions were improper, the allegation is directly related 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).

Complainant's final allegation is difficult to discern. He appears to allege that the magistrate judge is biased in enforcing governing rules because the judge permitted opposing counsel to miss a hearing on a motion and did not sanction the

attorney. A review of the record reveals that the judge attempted to contact opposing counsel when he did not appear for the hearing and complainant failed to submit any objectively verifiable evidence that the judge permitted opposing counsel to miss a hearing because the judge was biased. Additionally, the record shows that opposing counsel was present when the motion was ultimately decided. Accordingly, this allegation of misconduct based on bias is dismissed for failure to raise an inference of misconduct. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 650 F.3d 1370, 1371 (9th Cir. Jud. Council 2011); Judicial-Conduct Rule 11(c)(1)(D).

**DISMISSED.**