

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. 20-90164

ORDER

THOMAS, Chief Judge:

A complaint of judicial misconduct 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[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.

This misconduct complaint arises out of complainant's violation of the conditions of his supervised release. Complainant alleges the district judge engaged in improper ex parte communications with complainant's probation officer and used only the information from those communications to sentence him. He further argues that the district judge should have disclosed that he relied on the ex parte communications to sentence complainant. To the extent complainant alleges that the judge used only the information from the ex parte communications to sentence complainant, that allegation is dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii), (b)(1)(B). The transcript of the final disposition hearing reveals that the judge considered the recommendation report, the complainant's memorandum, and letters submitted on behalf of complainant.

To the extent complainant alleges that the judge should have disclosed that he relied on the ex parte communications to sentence complainant, that allegation is also dismissed. The misconduct rules do not define all ex parte communications as misconduct, only those that involve "improper discussions with parties or counsel for one side of the case." Judicial-Conduct Rule 4(a)(1)(C). Here, even if

the judge engaged in ex parte communications with the probation officer, it does not give rise to a reasonable inference that he had improper communications with opposing counsel.

DISMISSED.