

FILED

APR 15 2021

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 21-90005

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, a pro se litigant, filed an employment discrimination case. She alleges that the judge discriminated against her because she is a transgender person. In support of this allegation, complainant claims that the judge failed to refer to the complainant with the correct pronoun. Additionally, she alleges that the judge referred to her by her last name, which she considered demeaning and bigoted. However, a review of the record reveals that the judge used the correct pronouns of "she" and "her." This allegation is refuted by the record and must be dismissed. See 28 U.S.C. § 352 (b)(1)(B).

To the extent complainant finds the judge's use of her last name demeaning and bigoted, this allegation is dismissed as non-cognizable and for failure to allege misconduct. A judge using a person's name to refer to that individual is not 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).

DISMISSED.