

FILED

MAY 12 2021

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 21-90021

ORDER

THOMAS, Chief Judge:

Complainant, a lawyer, 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.

This misconduct complaint arises from an insurance contract dispute. Complainant is the plaintiff in the case and is also a licensed attorney, representing herself pro se. Complainant used her married name when she filed her civil complaint and used her maiden name when she listed herself as the attorney on the case.

Complainant alleges that the judge discriminated against her on the basis of sex because the judge made disparaging comments about complainant's use of both her married and maiden names. She further alleges that the judge was trying to intimidate complainant by noting that it was odd that complainant used two names. She also argues that in a minute order, the judge accused complainant of lying by using two names. A review of the underlying record shows that the judge did not make disparaging comments nor did she treat 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). In the minute order, the judge simply noted that complainant appears to also be the plaintiff using a different name. The judge does not state that the complainant is lying. These allegations must be dismissed as unfounded and refuted by the record. See 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant next alleges that the judge discriminated against her on the basis of her disability. The judge set a hearing and ordered all parties to appear in person. Complainant contacted several court staff to request a telephonic hearing. Complainant alleges that she has a medical condition and appearing in person during a pandemic would be a risk to her health. Court staff informed complainant that she must file a motion for such a request pursuant to local rules. Complainant filed a motion and the judge allowed her to appear via video. Because there was no misconduct, no further action is required. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D); In re Complaint of Judicial Misconduct, 567 F.3d 429, 431 (9th Cir. Jud. Council 2009).

Finally, complainant alleges that court staff placed complainant’s health at risk by requiring a money order to pay for transcripts, which would have increased

her risk of being exposed to COVID-19. The misconduct complaint procedure applies only to federal judges, and this allegation against court staff must be dismissed. See In re Complaint of Judicial Misconduct, 632 F.3d 1287, 1288 (9th Cir. Jud. Council 2011); Judicial-Conduct Rule 4.

DISMISSED.