

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. 21-90032

ORDER

MURGUIA, Chief Judge:

Complainant, a pro se litigant, 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 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 a housing discrimination case. In her misconduct complaint, complainant alleges that the district judge committed “fraud upon the court” when he made incorrect findings regarding the statute of limitations related to her case. Because this allegation relates directly to the merits of the judge's ruling, this allegation must be dismissed. See 28 U.S.C.

§ 352(b)(1)(A)(ii) (listing reasons the chief judge may decide to dismiss the complaint, including claims directly related to the merits of a decision); In re Complaint of Judicial Misconduct, 838 F.3d 1030 (9th Cir. Jud. Council 2016) (dismissing allegations that a judge committed “Fraud Upon the Court” by ruling in favor of defendants because adverse rulings are not proof of bias or fraud); Judicial-Conduct Rule 11(c)(1)(B).

Complainant next alleges that the judge admitted to misstating the date on which complainant filed an administrative complaint, which would have tolled the statute of limitations. However, a review of the docket reveals that the judge admitted to previously misstating the date on which complainant filed her civil

housing discrimination case not the date on which she filed her administrative complaint. Furthermore, the judge explained that the misstatement had no impact on the result of the case since the misstatement did not change the fact that complainant filed her civil complaint outside of the statute of limitations. This allegation is refuted by the record and must be dismissed. See 28 U.S.C. § 352(b)(1)(B) (listing reasons the chief judge may decide to dismiss the complaint, including claims that are conclusively refuted by objective evidence). Furthermore, this allegation is related to the merits and must also be dismissed on that ground. See 28 U.S.C. § 352(b)(1)(A)(ii) (listing reasons the chief judge may decide to dismiss the complaint, including claims directly related to the merits of a decision).

DISMISSED.