

June 21 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT****IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 22-90011

ORDER**MURGUIA**, Chief Judge:

Complainant, a pro se litigant, has filed a complaint of judicial misconduct against 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 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 the magistrate judge committed misconduct by dismissing her complaint and by denying various requests for remote access to the filings in her case. Because these allegations relate directly to the merits of the judge's rulings, the complainant has not alleged facts that might amount to judicial misconduct, and therefore the charge 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 district judge made various improper rulings as merits-related); Judicial-Conduct Rule 11(c)(1)(B).

Furthermore, complainant claims that the magistrate judge "prejudged" his decision to dismiss the complaint by not allowing supplemental briefing at oral argument for the motion to dismiss. Complainant also alleges that she was improperly denied an opportunity to speak at oral argument. A review of the record does not support these allegations; thus, these allegations must be dismissed

as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 900 F.3d 1163, 1166 (9th Cir. Jud. Council 2018) (dismissing as unfounded allegations that subject judges engaged in conspiracy, and other criminal acts because complainant failed to provide objectively verifiable evidence in support of these allegations).

Finally, complainant alleges that the magistrate judge made an improper sarcastic comment to her attorney. Because this charge lacks sufficient evidence to raise an inference that misconduct has occurred, it must be dismissed as unfounded. See Judicial–Conduct Rule 11(c)(1)(D); see also 28 U.S.C. § 352(b)(1)(A)(iii) (listing reasons the chief judge may decide to dismiss the complaint, including allegations “lacking sufficient evidence to raise an inference that misconduct has occurred”).

DISMISSED.