

FILED

Jan.19 2024

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 23-90026

ORDER

MURGUIA, 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 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 is an attorney representing a client in a civil matter.

Complainant alleges that the underlying case was improperly removed from state court to federal court in order to delay discovery. This allegation is related to the merits of the case and must 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); Judicial-Conduct Rule 11(c)(1)(B). Additionally, complainant provides no objective evidence in support of this allegation, and the allegation must also be dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii) (listing reasons the chief judge may decide to dismiss the complaint, including claims that lack sufficient evidence to raise an inference that misconduct occurred); Judicial-Conduct Rule 11(c)(1)(D).

Complainant also alleges that the district judge ignored facts about the defendant's residence and the existence of a similar case in state court. This allegation is belied by the record. The district judge scrutinized the issue of the defendant's residence because the case was removed to federal court based on diversity jurisdiction. Additionally, the district judge stayed the federal course

pending resolution of the state court case. Regardless, these allegations are related to the merits of the underlying case and must 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); In re Complaint of Jud. Misconduct, 838 F.3d 1030 (9th Cir. Jud. Council 2016) (dismissing as merits-related allegations that a district judge and magistrate judge made various improper rulings in a civil case); Judicial-Conduct Rule 11(c)(1)(B).

Complainant also alleges that the district judge took over four months to rule on a motion. Complainant argues that judge delayed the ruling in order to “make sure there is delay in these proceedings in important Discovery process.” Complainant provides no objectively verifiable evidence in support of this speculative claim that district judge delayed ruling on this motion because she was impeding the discovery process. Additionally, there is no evidence of habitual delay. Accordingly, this allegation must be dismissed as delay is not misconduct “unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” Judicial-Conduct Rule 4(b)(2).

DISMISSED.