

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. 23-90053

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 is a plaintiff in an employment discrimination case.

Complainant participated in a neutral case evaluation with the magistrate judge and alleges that the magistrate judge was not neutral. In support of her allegation, she argues that the judge intimidated complainant into taking lowball settlement offers, stated that complainant would lose on summary judgment, and repeatedly stated that he would see if he could get the other side to “go for” a settlement amount the judge put forward. It is not improper for judges to encourage settlement and provide views about the strengths or weaknesses of the parties' legal positions. See In re Complaint of Judicial Misconduct, 900 F.3d 1163 (9th Cir. Jud. Council 2018) (dismissing as unfounded allegations that a magistrate judge encouraged complainant to settle the case because judges may meet with parties separately, encourage settlement, and convey a party's offer and acceptance to facilitate the settlement). This is particularly true with early neutral evaluations, which is geared toward early resolution of the case and is oftentimes accompanied by an expert evaluation of the dispute. 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 or contain allegations which are incapable of being established through investigation).

Accordingly, this allegation is dismissed as unfounded.

DISMISSED.