

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. 24-90148

ORDER

MURGUIA, Chief Judge:

Complainant, an attorney, 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 the 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 appeared before the subject judge during a civil trial (“first trial”) that resulted in a mistrial, as well as the subsequent retrial (“second trial”). Before the second trial, the judge warned all parties that he would not tolerate the “wasted time” or “long delays” that occurred during the first trial while arranging for witnesses to testify by video. During the second trial, the judge cut short one witness’ testimony because the witness appeared by audio rather than video. Later, when complainant and opposing counsel both noted that their final witnesses would not be available until the following day, the judge terminated the evidence portion of the trial.¹

Complainant alleges that the judge treated him in a hostile and egregious manner, yelling and shouting at him repeatedly during both trials. This allegation overlaps with complainant’s other allegation that the subject judge is “irredeemably disabled,” “sleeps during trial or daydreams,” and “forgets facts and

¹ This practice appears consistent with the judge’s pretrial order, warning: “Do not run out of witnesses. If you are out of witnesses and there is more than a brief delay, the Court may deem that you have rested.”

events.” Complainant references certain decisions the judge made during trial but appears to understand that “[c]ognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling.” Judicial-Conduct Rule 4(b)(1).

A limited inquiry was conducted pursuant to Judicial-Conduct Rule 11(b). This inquiry included consideration of the judge’s response to the allegations. Complainant states that “all the documents that support [his] allegations” are available on the district court’s docket. However, only portions of the transcripts from each trial have been produced. A thorough review of the available record reflects that the judge was engaged throughout both the first and second trials, resolving objections promptly, admitting or excluding evidence, and interjecting when he needed something repeated for clarity. The written response to the complaint echoes that the judge was “a hands-on judge throughout the proceedings.”

The record does not reveal evidence of cognitive impairment or mental disability, and the judge emphatically and convincingly denies any such condition. Judicial-Conduct Rule 4(c) defines disability as “a temporary or permanent impairment, physical or mental, rendering a judge unable to discharge the duties of the particular judicial office.” The transcripts demonstrate that the judge was able

to function effectively, maintain control over the courtroom, and address all issues that arose during the trials. The judge's written orders also demonstrate clarity and thoughtfulness.² Although complainant asserts that the judge "has a hard time understanding things," complainant offers no specific examples, and the transcripts refute this assertion. Accordingly, the allegation is 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 are lacking sufficient evidence to raise an inference that misconduct has occurred); *In re Complaint of Judicial Misconduct*, 569 F.3d 1093 (9th Cir. Jud. Council 2009) ("claimant's vague insinuations do not provide the kind of objectively verifiable proof that we require"); Judicial-Conduct Rule 11(c)(1)(D).

Regarding the allegations of hostile treatment, the record reflects that the judge occasionally expressed frustration, calling complainant "irksome," stating "I'm not going to forgive you readily because I don't think you're being properly responsive," and telling opposing counsel "You talk over me constantly. Don't do it anymore. When I speak, wait." However, remarks indicating impatience or annoyance do not rise to the level of hostile or egregious treatment. *See In re*

² Complainant's speculative "doubt" that the judge wrote the orders is entirely unsupported. Moreover, the judge's written response rebutted this speculation.

Complaint of Judicial Misconduct, 761 F.3d 1097, 1098-99 (9th Cir. Jud. Council 2014) (dismissing as unsupported allegations that a judge’s comments were rude, derogatory, or intemperate because the judge did not use demeaning language or heap abuse on anyone). Nevertheless, the judge is reminded that a “judge should be patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity.” Code of Conduct for United States Judges Canon 3(A)(3).

Because complainant has not offered any evidence of “conduct prejudicial to the effective and expeditious administration of the business of the courts,” this allegation is dismissed as unfounded. *See* 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 4(a); 11(c)(1)(D).

DISMISSED.