

Dec.12 2023

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

No. 22-90031

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.

Complainant alleges that the district judge falsely accused the complainant of threatening to kill judges and clerks and sent U.S. Marshals to the complainant's home to interrogate him. Complainant further alleges that the district judge did so in retaliation because the complainant threatened to file a lawsuit and misconduct complaint. Complainant concedes that he called the courthouse and left "a barrage of irate voicemails." It is protocol for U.S. Marshals to respond to perceived threats against judges and court staff when there is a safety concern presented, and complainant's communications with the court would reasonably support a safety concern. See 28 U.S.C. § 566(a) ("It is the primary role and mission of the United States Marshals Service to provide for the security...of the United States District Courts... as provided by law."). Additionally, there is no evidence to support the allegation that the U.S. Marshals acted out of any reason other than a safety concern. Thus, these allegations are dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 900 F.3d 1163, (9th Cir. 2018) (dismissing allegations that subject judges engaged in racketeering, bribery,

conspiracy, kidnapping, and other criminal acts because complainant provided no objectively verifiable evidence in support of those allegations) Judicial-Conduct Rule 11(c)(1)(D).

Complainant next alleges that the district judge falsely implied that complainant had been imprisoned for drug trafficking. A review of the docket reveals that the district judge cited a legal case where the defendant in the case had a history of drug trafficking; however, the judge did not discuss the facts of the case and made no reference to the complainant. This allegation is therefore “conclusively refuted by objective evidence” and must be dismissed. 28 U.S.C. § 352(b)(1)(B).

To the extent that the complainant challenges the district judge’s order dismissing the underlying case for failure to state a claim, this allegation relates to the merits of the judge’s ruling and 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); Judicial-Conduct Rule 11(c)(1)(B).

DISMISSED.