

Dec. 14 2023

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

No. 22-90032

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 challenges several of the district judge's orders, including the denial of a recusal motion. A review of the docket reveals that the complainant did not appeal the judge's denial of the motion to disqualify. See generally United States v. McTiernan, 695 F.3d 882, 891 (9th Cir.2012) ("Rulings on motions for recusal are reviewed under the abuse-of-discretion standard."). These allegations relate directly to the merits of the judge's rulings and must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); In re Complaint of Judicial Misconduct, 647 F.3d 1181 (9th Cir. Jud. Council 2011) ("Allegations that a judge erred in failing to recuse are generally dismissed as merits-related."); Judicial-Conduct Rule 11(c)(1)(B).

The complainant further alleges that it was a conflict of interest for the district judge to "rule on a case that a litigant filed a judicial complaint against the judge." An allegation that a judge presided in a case knowing that he was subject to a conflict of interest may present a viable claim of judicial misconduct. See Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice 146 (2006). However, a judge is not automatically disqualified

because a litigant files a judicial misconduct complaint. See In re Mann, 229 F.3d 657, 658 (7th Cir. 2000) (district judge is not disqualified merely because litigant files complaint alleging judicial misconduct); see generally United States v. Studley, 883 F.2d 934, 940 (9th Cir. 1986) (“A judge is not disqualified by a litigant’s suit or threatened suit against him.”). Here, because the complainant provides no evidence of a conflict of interest, this allegation is dismissed as baseless. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant next alleges that the district judge signed an order authored by defendant’s counsel. A review of the docket reveals that the district judge and defendant’s counsel both denied this allegation. Moreover, the complainant provides no evidence in support of this allegation, which is dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Finally, complainant alleges that because the district judge suffers from a medical condition, “his cognitive abilities may be declining,” the condition caused improper delay during a hearing, and led to the judge becoming “flustered or angered” at the hearing. A review of the docket and a transcript of the hearing identified by the complainant did not reveal any evidence of improper delay or disability-related issues that affected the judge’s ability to carry out his judicial responsibilities. Accordingly, these allegations are dismissed as unfounded. See

28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 758 F.3d 1161 (9th Cir. Jud. Council 2014); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.