

Dec.13 2023

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

No. 22-90033

**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 denied the complainant due process, equal protection, and his right to legal assistance when the judge remanded complainant's criminal case to state court. 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) (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 Judicial Misconduct, 838 F.3d 1030 (9th Cir. Jud. Council 2016) (dismissing allegations that a district judge and magistrate judge made various improper rulings as merits related); Judicial-Conduct Rule 11(c)(1)(B).

Complainant also alleges that the district judge failed to recuse from complainant's civil case. The complainant claims that the judge is a potential witness because the complainant emailed the judge's chambers and that the judge may have a conflict of interest because the judge is friends with two district judges. Allegations that a judge erred in failing to recuse are merits related and must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); In re Complaint of Judicial

Misconduct, 579 F.3d 1062, 1064 (9th Cir. Jud. Council 2009); Judicial-Conduct Rule 11(c)(1)(B). Although 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), complainant has failed to present evidence that any such conflict existed. The allegations are therefore dismissed as baseless. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 756 F.3d 1143, 1144 (9th Cir. 2014), aff'd, 768 F.3d 998 (9th Cir. 2014); Judicial-Conduct Rule 11(c)(1)(D).

**DISMISSED.**