

Apr. 17 2024

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

No. 22-90117

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 alleges the magistrate judge was biased against him, and showed favoritism toward the defendants. As support, he states that the magistrate judge engaged in “friendly banter” with one defendant, who had practiced law in the same district as the magistrate judge for 30 years. This falls far short of demonstrating bias or conflict, and 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 frivolous or 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).

Complainant next alleges that the magistrate judge was hostile toward him, but fails to provide evidence to support the allegation. Accordingly, this allegation is also dismissed as unfounded. See id.

Next, complainant alleges that the magistrate judge should have recused

himself, and suggests that his assignment, following the recusal of a different magistrate judge, was “suspect.” However, complainant fails to provide any compelling reason for this magistrate judge to have recused himself, or any evidence of impropriety in the assignment process. Accordingly, this allegation is dismissed as unfounded. Id.; see also In re Complaint of Judicial Misconduct, 650 F.3d 1370, 1371 (9th Cir. Jud. Council 2011) (dismissing because a litigant has no right to a particular procedure for the selection of a judge and complainant failed to show any improper motive). Additionally, because allegations that a judge erred in failing to recuse are merits-related, it is also dismissed on that basis. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 4(b)(1); 11(c)(1)(B).

DISMISSED.