

Apr. 19 2024

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

No. 23-90000

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 the district judge committed misconduct by delaying in setting a trial date for his case. Delay alone is not a basis for relief, absent “an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” See Judicial-Conduct Rule 4(b)(2); In re Complaint of Judicial Misconduct, 567 F.3d 429, 431 (9th Cir. Jud. Council 2009). The record is devoid of any indication that the judge deliberately delayed in setting a trial date, or harbored an improper motive. The record does reveal a complex case history, due to an extensive number of motions being filed, the decision to consolidate the matter with another action, a stay in ruling on pending motions due to settlement negotiations, and an appeal to the Ninth Circuit. Because complainant has not offered any evidence of misconduct, these charges must be dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant also alleges that the district judge committed misconduct by denying his motions, specifically complainant's motion to reopen discovery and complainant's motion to certify a question to the state supreme court. Any

challenge to the denial of these motions is merits related and must be dismissed on that ground. 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 as merits-related allegations that a district judge and magistrate judge made various improper rulings in a civil case); Judicial-Conduct Rule 11(c)(1)(B).

DISMISSED.