

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 23-90047

ORDER

MURGUIA, Chief Judge:

Complainant, a prisoner, 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 that the magistrate judge should have recused herself *sua sponte* because she “failed to maintain professional competence.” As support, complainant alleges that the magistrate judge breached a duty to ensure that defense counsel was effective and violated the law by imposing a sentence before complainant was convicted. It appears that complainant misunderstood an order the magistrate judge entered regarding terms of supervised pretrial release, as the magistrate judge did not impose any sentence. Because complainant has failed to allege any actions that might qualify as misconduct or require recusal, these allegations are dismissed. See Judicial-Conduct Rule 11(c)(1)(A) (authorizing dismissal of allegations regarding “conduct that, even if true, is not prejudicial to the effective and expeditious administration of the business of the courts”).

Complainant also alleges that there was delay in her criminal case, however, she does not attribute this delay to the magistrate judge. Accordingly, this allegation is dismissed. See Judicial-Conduct Rule 11(c)(1)(D) (authorizing dismissal of allegations “lacking sufficient evidence to raise an inference that

misconduct has occurred”).

DISMISSED.