

FILED

AUG 22 2024

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 23-90166

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 that the magistrate judge “allowed his clerk to telegraph prejudicial ex parte messages to opposing counsel.” At the outset, any allegation of wrongdoing by the clerk is beyond the scope of this complaint because the Judicial-Conduct Rules apply only to active federal judges. See Judicial-Conduct Rule 1.

Moreover, the record reflects that the clerk sent an email to an attorney noting that a filing deadline has passed and inquiring whether a response would be forthcoming. This is not prejudicial ex parte communication. Accordingly, this allegation is dismissed because the conduct, “even if true, is not prejudicial to the effective and expeditious administration of the business of the courts.” See Judicial-Conduct Rule 11(c)(1)(A).

To the extent complainant challenges the magistrate judge's decision to inquire about the response, such an allegation relates directly to the merits of the judge's decision and may be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii) (listing reasons the chief judge may decide to dismiss the complaint, including that claims

are directly related to the merits of a decision); Judicial-Conduct Rule 11(c)(1)(B).

To the extent complainant alleges that the email amounted to “unfair” treatment or conferred a benefit on opposing counsel, it 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 lacking sufficient evidence to raise an inference that misconduct has occurred); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.