

AUG 1 2024

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

No. 23-90179

**ORDER****MURGUIA**, Chief Judge:

Complainant, a pro se litigant, has filed a complaint of judicial misconduct against a circuit 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 circuit judge committed misconduct by referring to complainant as a “jerk” during oral argument and by laughing while making the reference. A review of the oral argument recording indicates that the circuit judge used the term “jerk” as part of a hypothetical regarding the correct legal standards to be used for a discrimination claim, and that the circuit judge did not laugh while doing so. There was no “demonstrably egregious and hostile” treatment of complainant and no indication of misconduct. Accordingly, the allegation is dismissed as unsupported. 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, 906 F.3d 1167 (9th Cir. Jud. Council 2018) (dismissing allegation of hostile treatment); Judicial-Conduct Rule 11(c)(1)(D).

Complainant also raises allegations against appellee's counsel present at oral argument. Such allegations must be dismissed as outside the scope of this

proceeding. Judicial-Conduct Rule 1(a), (b).

**DISMISSED.**