

FILED

AUG 23 2024

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 24-90026

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 wrongfully refused to recuse herself and wrongfully denied complainant's motion for default judgment. These allegations are dismissed because they relate directly to the merits of the magistrate judge's decisions. "Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling, including a failure to recuse." Judicial-Conduct Rule 4(b)(1). See also 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 allegations that a district judge and a magistrate judge made various improper rulings in a civil case as relating to the merits); Judicial-Conduct Rule 11(c)(1)(B).

Complainant also alleges that the magistrate judge was "very emotional, argumentative, harassing, intimidating" and "yelled" at him during a hearing. A review of the audio recording of this hearing reflects that this description applies to complainant's conduct during the hearing, but not to the magistrate judge's.

Instead, despite complainant frequently interrupting her, the magistrate judge listened to complainant, sought to have a conversation with him, and offered to give him an extension of time to file a response. The magistrate judge never used profanity or engaged in personal attacks. This fails to show the “demonstrably egregious and hostile” treatment contemplated in Judicial-Conduct Rule 4(a)(2)(B). Because complainant has not offered evidence of misconduct, this allegation is dismissed as unfounded and belied by the record. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 761 F.3d 1097, 1098-99 (9th Cir. Jud. Council 2014) (dismissing as unsupported allegations that a judge’s comments were rude, derogatory, or intemperate because the judge did not use demeaning language or heap abuse on anyone); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.