

**FOR PUBLICATION**

**JUDICIAL COUNCIL  
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF**

**JUDICIAL MISCONDUCT**

No. 24-90086

**ORDER**

Filed January 8, 2025

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**ORDER**

**MURGUIA**, Chief Judge:

On July 1, 2024, a complaint of judicial misconduct was filed against a district judge of this circuit.<sup>1</sup> 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

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<sup>1</sup> This complaint also included allegations of wrongdoing by the chief circuit judge. To ensure an independent review of and decision on that portion of the complaint, the chief circuit judge recused herself and referred those allegations to a different circuit judge for review pursuant to 28 U.S.C. § 351(c). In a decision published on August 23, 2024, the allegations contained in that complaint were dismissed as unfounded.

decisions of the Ninth Circuit Judicial Council. In accordance with these authorities, the names of the 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.

The Circuit received this misconduct complaint through the complainant’s transmittal of a completed misconduct complaint form with an attached editorial discussing conduct that occurred during a 2021 civil jury trial. During that trial, an attorney was held in contempt after receiving and ignoring a district judge’s warnings to comply with certain evidentiary rulings and basic courtroom civility.

For example, the district judge excused the jury early in the trial to admonish the attorney and “put[] [her] on notice” after she repeatedly interrupted him and made it “almost impossible” to “control the proceedings.” The district judge warned the attorney that, if she continued, he would have to hold her in contempt, which he said “would be very undesirable from [his] standpoint.” The attorney responded to this admonition that it was not fair. After interrupting the

district judge several more times, the district judge held her in contempt but said he would “deal with [the contempt finding] following the trial.” He ordered the jury to return to the courtroom and allowed the attorney to proceed with her presentation. Immediately after the jury returned, the attorney again interrupted the district judge, and, with the jury present, the district judge told the attorney “[y]ou’re speaking again without permission. You have again violated my admonition.”

Similar examples of the attorney’s disruptive behavior followed, including when, while discussing admission of a piece of evidence with the district judge outside of the jury’s presence, the attorney asked the judge, “[y]our Honor, am I being deposed?” During that exchange, the district judge informed her that she was “digging a deeper hole for [herself].” When, soon after that exchange, she interrupted the district judge again, he told her “[y]ou’re finding other grounds for being held in contempt,” and “you don’t learn.”

During the attorney’s closing argument, she and the district judge had another exchange after the attorney attempted to discuss facts not in evidence. The district judge, with the jury present, told the attorney that if she “continue[d] to argue beyond the record . . . [he would] have to foreclose [her] argument.” The district judge told the attorney not to “raise her voice” and, after she continued to argue with the district judge, the district judge told her that he could not “allow her to continue.” The attorney stated repeatedly that this was “outrageous,” and that she could “get disbarred” if the district judge did not allow her to discuss the evidence she sought to present. The district judge finally told the attorney, “[u]nless you stop right away, I’m going to have to take action that I don’t want to take.” He eventually told the attorney that she could sit down—

effectively ending her closing argument—and allowed opposing counsel to begin his closing argument.

During opposing counsel's argument, the attorney objected almost immediately, and the district judge told her "[i]f you keep screaming, ma'am, you're going to give me no recourse." She told him, "[t]his is error," and the district judge said, "this is getting out of control." The district judge asked the attorney's co-counsel for assistance in "controlling things," and the district judge told the attorney, "we have to make some order of this, and the screaming and yelling just can't go on."

Opposing counsel proceeded with his closing argument, during which the district judge said the attorney was "muttering and speaking under her breath." After the district judge asked the attorney's co-counsel again for help controlling the matter, the attorney said, "[i]t's so hard being a woman." At that point, the district judge excused the jury.

With the jury excused, the district judge told the attorney that he was "at the breaking point," and the attorney told him, "[n]o, I'm at the breaking point." The district judge at that time informed the attorney that she was in contempt and asked one of the Deputy U.S. Marshals to "take [her] in custody." The attorney protested, and the district judge told her that there was "no other way to maintain decorum in the courtroom." The attorney was escorted out of the courtroom, after which the district judge informed the attorney's co-counsel that although removing the attorney was "an extreme action," the matter "was totally out of control, and [the district judge] just had no way to get things under control."

The district judge brought the jury back into the courtroom and informed the jury that the attorney was not

present for reasons that were “not in any way relevant.” Opposing counsel at that time continued with his closing argument, and the attorney’s co-counsel followed with his rebuttal on behalf of his and the attorney’s client.

After closing arguments, the jury was excused to deliberate, and the court took a brief recess. Following that recess, and with the jury and the attorney out of the room, the district judge addressed counsel to make a finding on the record as to whether to find the attorney in civil or criminal contempt. The district judge said that he had “ample bases” to find her in criminal contempt based on her repeated obstruction of his orders after “multiple, multiple warnings.” He stated that he ordered her detained because he felt he “couldn’t control the proceedings any longer,” and because she was “totally out of control and seemed unlikely to regain control.” The district judge said

it was just impossible to continue on with the trial. So, I ordered her incarcerated. I didn’t want it to be more punitive than necessary, and so I didn’t order her booked and processed. She’s just in the holding area. And I’m now -- since there is no need for this sanction, that is, incarcerating her, I’m going to order her released, and I’m going to order the marshals to escort her out of the building.

He also said

[t]he sanction was not intended to be punitive, because if I intended to be punitive, I could easily invoke criminal contempt. Many judges would under these unusual

circumstances, but I don't want to go in that direction. And so that is what I'm going to do. And the marshal is ordered to release her, escort her out of the building and advise her that she's not to participate in the trial any further.

The trial transcript reflects that the district judge ordered the attorney removed from the courtroom around 3:23 p.m., and he ordered her to be released around 4:40 p.m.

In the weeks that followed, the district judge granted opposing counsel's motion for a new trial because the attorney's "persistent misconduct infected the trial from start to end, prejudicing the jury and [opposing counsel's client's] right to a fair trial." The district judge also ordered the attorney to show cause why she should not be found in civil contempt and ordered to pay opposing counsel's fees that resulted from the first trial.

The attorney responded to the show cause order with various arguments why contempt sanctions were unwarranted, including that her removal from the courtroom was unjustified and impermissible as a civil contempt sanction. After considering the attorney's response to his show cause order, the district judge found the attorney in civil contempt and imposed the compensatory sanction. In so finding, the district judge explained that the attorney's "removal was not a contempt sanction at all—whether civil or criminal—rather it was an exercise of the [c]ourt's authority to maintain order."

The attorney appealed the civil contempt order to the Ninth Circuit Court of Appeals, arguing that the "district court committed clear error when it found [her] in civil

contempt.” In that proceeding, the attorney submitted a sworn declaration, in which she described her experience after the district judge ordered the Marshals to detain and remove her from the courtroom. The attorney’s declaration states that she was placed in handcuffs and ankle cuffs with a “chain looped around [her] waist, chest, and shoulders [...] connecting [her] handcuffs to the leg irons,” and she was forced to walk barefoot down ten floors of the courthouse before being “locked in a prison cell.” The attorney stated in her declaration that she was held “for hours” and, upon release, was “stranded at night.” The attorney noted in her briefing before the Ninth Circuit that her “appeal offers no remedy for [the district judge’s] summary arrest and incarceration of [the attorney] . . . , disqualification from representing her client in the case, and concomitant harm to her reputation.”

The Ninth Circuit affirmed the district court’s civil contempt order against the attorney. In doing so, the Ninth Circuit relied on evidence that the attorney was “[s]hout[ing] objections in defiance of verbal orders.” The Ninth Circuit concluded that the order to pay opposing counsel’s fees was “properly characterized as a civil sanction.” The Ninth Circuit also noted that the attorney “acknowledges that she lacks an appellate remedy for her period of temporary confinement and does not appeal it, so we express no views on that issue.”

After complainant officially filed the misconduct complaint with the accompanying editorial in July 2024, a limited inquiry was conducted pursuant to Judicial-Conduct Rule 11(b). This inquiry included reviewing the record, which contains the attorney’s declaration, as well as requesting and considering responses from the district judge

and the Marshals on duty or scheduled to be on duty at the time the attorney was held in contempt.

The editorial accompanying the misconduct complaint refers to the district judge as “a liar” and describes the district judge’s memorandum explaining the district judge’s contempt finding as “nonsense.” It appears from the editorial, then, that the complainant alleges the district judge committed misconduct in finding the attorney in civil contempt and exceeded his authority in ordering her detained in unfavorable conditions.

The Judicial-Conduct Rules are concerned, in relevant part, with whether a district judge acted in a “demonstrably egregious and hostile manner” toward those who appeared before him or her. *See* Judicial-Conduct Rule 4(a)(2). But “[c]ognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling.” Judicial-Conduct Rule 4(b)(1).

To the extent complainant alleges that the district judge committed misconduct by ordering the attorney’s removal from the courtroom and subsequent detainment, the allegation impermissibly challenges the merits of the district judge’s decision.<sup>2</sup> The same is true of any challenge to the district judge’s evaluation of whether the attorney’s behavior warranted a civil or criminal contempt finding. Accordingly,

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<sup>2</sup> As the Ninth Circuit noted in the decision affirming the district court’s civil contempt order, the attorney did not appeal the issue of temporary confinement because she lacked an appellate remedy in that respect. The attorney did, however, challenge the district judge’s decision to order her detained in her response to the district judge’s show cause order. And, in the attorney’s petition for rehearing and rehearing en banc of the Ninth Circuit panel decision, the attorney implies that the Ninth Circuit should have addressed her period of detainment in its decision.



to the extent complainant brings allegations based on the merits, those are dismissed.<sup>3</sup> 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).

Further, nothing in the record supports the allegation that the district judge is “a liar.” That allegation, to the extent that it does not relate to the merits, 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); *In re Complaint of Judicial Misconduct*, 569 F.3d 1093 (9th Cir. Jud. Council 2009) (“claimant’s vague insinuations do not provide the kind of objectively verifiable proof that we require”); Judicial-Conduct Rule 11(c)(1)(D). Nor is there any evidence that the district judge behaved “in a demonstrably egregious and hostile manner” toward the attorney during the trial. To the extent complainant alleges misconduct in violation of Rule 4(a)(2)(B), such an allegation is dismissed as unsupported by the facts.

Here, the district judge was confronted with an attorney exhibiting recalcitrant behavior. Despite the district judge’s repeated warnings, the attorney continued to disrupt the

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<sup>3</sup> To the extent that complainant alleges the district judge exceeded his authority in ordering the attorney detained, those allegations are dismissed as unfounded. Further, any allegation related to the Marshals’ treatment of the attorney while she was detained is not appropriate in a misconduct complaint because the Judicial-Conduct Rules apply only to covered federal judges. See Judicial-Conduct Rule 1. There is no evidence of any separate claim against the Marshals based on her detention.

proceedings and offer inappropriate commentary, including in the presence of the jury. Based on this behavior, the district judge held the attorney in contempt early in the trial, but that early ruling did not deter her. Following that contempt ruling, the district judge offered several additional warnings—including requesting the attorney’s co-counsel assist the district judge in controlling the attorney’s unruly behavior—before the district judge ordered the Marshals to detain the attorney and remove her from his courtroom. After about an hour and a half, the district judge ordered the Marshals to release her.

The attorney appealed the district judge’s civil contempt order, and the Ninth Circuit affirmed that order. In her petition for rehearing and rehearing en banc of the Ninth Circuit panel decision, the attorney briefly raised whether the Ninth Circuit should have addressed her period of detainment in its decision. But that is a merits question and is inappropriate for consideration in a misconduct complaint. *See* Judicial-Conduct Rule 4(b)(1). And despite the sympathetic personal circumstances revealed to the district judge after the attorney’s removal that potentially influenced her behavior that day, there is no doubt that the attorney’s conduct jeopardized the fairness of the proceedings and the administration of justice. District judges are required to do what is necessary to maintain order in their courtrooms. *Zambrano v. City of Tustin*, 885 F.2d 1473, 1478 (9th Cir. 1989) (a trial judge has inherent power “to maintain order and preserve the dignity of the court”).

Accordingly, the allegations are dismissed as lacking evidence that the district judge exceeded his authority, behaved in a demonstrably egregious and hostile manner, or otherwise engaged in “conduct prejudicial to the effective

and expeditious administration of the business of the courts.”  
*See* 28 U.S.C. § 351(a); Judicial-Conduct Rule 11(c)(1)(D).

**DISMISSED.**