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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. 24-90090

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 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.

Complainant alleges that, during a settlement conference, the magistrate judge offered his "personal opinion" that complainant's case was weaker than the opposing side's. Settlement conferences provide unique opportunities to candidly assess the strengths and weaknesses of a case. Given this context, the statements complainant attributes to the magistrate judge do not amount to misconduct. Accordingly, any allegations regarding the magistrate judge's comments or conduct during the settlement conference are dismissed. *See* Judicial-Conduct Rule 11(c)(1)(A) (dismissal is warranted when the conduct alleged "even if true, is not prejudicial to the effective and expeditious administration of the business of the courts").

Complainant further alleges that the magistrate judge shouted at him once near the end of the settlement conference. No record exists of the confidential conversation complainant describes. However, even assuming the magistrate judge did shout, one isolated comment about the merits of the case does not indicate hostile or rude treatment of complainant. *See 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). Accordingly, this allegation is dismissed. *See* Judicial-Conduct Rule 11(c)(1)(A), (D).

Finally, complainant alleges that it was a conflict of interest for the magistrate judge to be assigned to the civil case, as well as acting as the mediator for the settlement conference. However, the local rules of the relevant district court expressly allow this arrangement, and allow either party to request a different arrangement, which did not occur here. Because complainant does not offer any examples of how the magistrate judge was conflicted and provides no objectively verifiable evidence to support this allegation, 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); *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).

DISMISSED.