

FILED

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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. 24-90141

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 filed a civil rights complaint against multiple defendants. The defendants filed motions to dismiss. Although the magistrate judge initially took the matter under submission without oral argument, she later conducted a hearing on these and other motions. Following the hearing, the magistrate judge issued a lengthy order that partially granted the motions to dismiss but allowed some of complainant's claims to proceed.

Complainant alleges that the magistrate judge displayed "favoritism" and "made rulings that consistently favor[ed] government defendants." However, adverse rulings are not proof of bias. *See In re Complaint of Judicial Misconduct*, 838 F.3d 1030 (9th Cir. Jud. Council 2016). Further, the record reflects that the magistrate judge found at least some of complainant's claims could proceed and that the defendants were "not entitled to qualified immunity" as to every claim. Accordingly, this allegation is dismissed as belied by the record and 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).

Next, complainant alleges that the magistrate judge discriminated against her “on account of her race, ethnicity, background, and other legally protected attributes.” She offers no evidence to support this baseless allegation, which is dismissed as unfounded. *Id.*

Finally, complainant alleges that the magistrate judge committed misconduct by delaying her ruling on the defendants’ motions to dismiss. Without a showing of an “improper motive in delaying a particular decision or a habitual delay in a significant number of unrelated cases,” delay alone is not cognizable misconduct. *See* Judicial-Conduct Rule 4(b)(2).

The record reflects that the magistrate judge took the motions to dismiss under submission one month after they were filed. A hearing was held on the motions to dismiss, as well as other matters, nine months after the initial filing of the motions to dismiss. It is important to note that during those intervening months, additional motions were filed, and docket activity continued. In this context, it cannot be said that there was substantial delay in this case or habitual delay in

unrelated cases. Moreover, there is no indication that the magistrate judge harbored an improper motive. Complainant's baseless allegation of racial discrimination is not evidence of an improper motive. Accordingly, this allegation is dismissed as not cognizable and unfounded. *See* 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.