

FILED

MAR 6 2025

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 24-90147

ORDER

MURGUIA, Chief Judge:

Complainants, four pro se litigants, have filed a complaint of judicial misconduct against a district 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 complainants 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.

Complainants filed a federal lawsuit regarding a probate matter. They sought an extension of time to file an amended complaint, as well as to respond to various pending motions to dismiss. The complainants mailed an amended complaint to the clerk, which was received after the time for amending the complaint as a matter of course under Federal Rule of Civil Procedure 15(a)(1). Accordingly, the amended complaint was lodged, but not filed.

Complainants first allege that the district judge committed perjury by “making false statements under oath.” As background, the complainants disagreed with the clerk's decision to lodge, rather than file, their amended complaint. The district judge issued an order that included the following lines:

The Clerk's office has indicated that one of the Plaintiffs threatened to sue a member of the Clerk's office for lodging the amended complaint...Plaintiffs are strongly cautioned that harassment of the staff in the Clerk's office will not be tolerated and, if continued, could lead to an order to show cause why such conduct should not be sanctioned.

Complainants have submitted sworn declarations attesting that they made no such threat. Even so, complainants have failed to demonstrate that the district

judge intentionally made a false statement or “lied under oath.” Accordingly, this allegation 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). Moreover, it was appropriate for the district judge to follow up on troubling information provided to him by the Clerk’s office. Setting aside the veracity of the statement, the district judge’s conduct “is not prejudicial to the effective and expeditious administration of the business of the courts.” *See* Judicial-Conduct Rule 11(c)(1)(A).

Complainants next allege that the district judge “wrongly create[ed] new laws regarding filing dates.” This allegation stems from complainants’ disagreement with the Clerk’s office and the district judge, as to whether their amended complaint should have been filed as timely under Rule 15(a)(1). To the extent complainants challenge the district court’s ruling, the allegation is dismissed because it relates directly to the merits of the judge’s decision. *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); *In re Complaint of Judicial Misconduct*, 838 F.3d 1030 (9th Cir. Jud. Council 2016) (dismissing as merits-related allegations that a judge made various improper rulings in a case); Judicial-Conduct Rule 11(c)(1)(B). Any allegation that the district judge “create[ed] new laws” is dismissed as unfounded. *See* 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Next, complainants allege that the district judge “made a false statement under oath” when he wrote that “[t]he Court is duty-bound to follow Ninth Circuit law.” Complainants have failed to demonstrate that the district judge made a false statement or engaged in any misconduct and appear to be challenging the judge’s application of the law. Accordingly, this allegation is dismissed as unfounded and as an impermissible challenge to the merits of the judge’s decision. *See* 28 U.S.C. § 352(b)(1)(A)(ii), (iii); Judicial-Conduct Rule 11(c)(1)(B), (D).

Finally, complainants allege that the district judge “refused to give [them] any extensions of time,” which had the effect of obstructing justice. To the extent complainants disagree with the district judge’s conclusion that their amended complaint was submitted outside the timelines established in Rule 15(a)(1), the allegation is dismissed because it relates directly to the merits of the judge’s decision. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B). The

allegation is further dismissed as belied by the record, which reflects that the district judge sua sponte extended complainants' deadline to respond to the pending motions to dismiss and later granted complainants' motion for an extension of time to file a response.

DISMISSED.