

OFFICE OF THE CIRCUIT EXECUTIVE

UNITED STATES COURTS FOR THE NINTH CIRCUIT

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October 19, 2020

Darryl Cotton  
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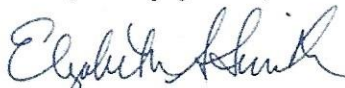
Re: Complaint of Judicial Misconduct No. 20-90056

Dear Mr. Cotton:

Chief Judge Thomas has issued an order in your complaint of judicial misconduct. A copy is enclosed.

A complainant or judge aggrieved by an order of the chief judge may petition the judicial council for review thereof by filing such petition in the office of the clerk of the court of appeals within 42 days of the date of the clerk's letter to the complainant transmitting the chief judge's order. 28 U.S.C. § 352(c); Judicial-Conduct Rule 18(b).

Very truly yours,



Elizabeth A. Smith

EAS/tc

**FILED**

OCT 19 2020

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

**JUDICIAL COUNCIL  
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF  
JUDICIAL MISCONDUCT**

No. 20-90056

**ORDER**

**THOMAS**, Chief Judge:

Complainant, a pro se litigant, has 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 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 district judge is covering up the biased and unethical actions of a Superior Court judge who presided over complainant's civil case regarding a joint venture agreement. To support his allegation, complainant points to the fact that the district judge denied a motion for a temporary restraining order. In denying that motion, complainant alleges the district judge also improperly stated that defendants were not given proper notice. These issues directly relate to the merits of the case and must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B); In re Complaint of Judicial Misconduct, 579 F.3d 1062, 1064 (9th Cir. Jud. Council 2009).

Complainant further supports his allegation of bias with his belief that the district judge failed to read the civil complaint. To support his belief, he points to one of the district judge's orders, in which she stated that the complaint was difficult to summarize because of its length and confusing nature. To the extent the district judge found the complaint difficult to decipher, that does not constitute misconduct. Beyond a reference to the above statement, complainant submits no



evidence to support his allegation that the district judge failed to read the civil complaint, which is dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); 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).

Finally, complainant alleges that the district judge lied by stating that a witness was a defendant. A review of the docket shows that the district judge was merely quoting a motion filed by the plaintiff, which stated that the witness was a defendant. This allegation is therefore “conclusively refuted by objective evidence” and must be dismissed. 28 U.S.C. § 352(b)(1)(B).

**DISMISSED.**



**The Ninth Circuit Judicial Council's Judicial Misconduct Proceedings Rules**  
Effective May 2018

The Ninth Circuit Judicial Council adopted the following rules for misconduct proceedings:

**Rule 6(b): *Brief statement of facts.*** A complaint must contain a concise statement that details the specific facts on which the claim of misconduct or disability is based. The statement of facts should include a description of:

- (1) what happened;
- (2) when and where the relevant events happened;
- (3) any information that would help an investigator check the facts; and
- (4) for an allegation of disability, any additional facts that form the basis of the allegation.

**Rule 6(c): *Legibility.*** A complaint should be typewritten if possible. If not typewritten, it must be legible. An illegible complaint will be returned to the complainant with a request to resubmit it in legible form. If a resubmitted is still illegible, it will not be accepted for filing.

**Rule 6(d): *Complaint's Address and Signature; Verification.*** The complainant must provide a contact address and sign the complaint. The truth of the statements made in the complaint must be verified in writing under penalty of perjury. If any of these requirements are not met, the complaint will be accepted for filing, but it will be reviewed under only Rule 5(b).

**Local Rule 6.1(a): *Name of Subject Judge.*** Complainant must either use the form appended to the local rules, or shall identify any and all subject judge(s) on the first page of the complaint. If complainant fails to so identify the subject judge(s), the complaint will be returned to complainant with a request to do so.

**Local Rule 6.1(b): *Page Limit.*** The statement of facts must not be longer than five pages (five sides), or 1,200 words, whichever is less. The complaint must be submitted on standard 8.5x11 size paper. A complainant may petition the Chief Judge for permission to submit additional pages if extraordinary circumstances exist, and the Chief Judge may delegate the consideration of these requests to the Circuit Executive.



**Local Rule 6.1(d): Acknowledgment.** The complaint must include the following written acknowledgment: "I understand that even if I successfully prove that the judge engaged in misconduct or is disabled, this procedure cannot change the outcome of the underlying case." Complainant may either write this acknowledgment in the space provided in Section 6 of the complaint form, or complainant must write out the acknowledgment on the first page of the complaint. If complainant fails to write out the acknowledgment, the complaint will be returned to complainant with a request to do so.

**Amended Local Rule 6.1(e): Number of Copies.** The complainant must file an original and one copy of (1) the complaint form, (2) the statement of facts, and (3) any documents submitted.

**Rule 18(b): When to File; Form; Where to File;** A petition for review must be filed in the office of the circuit clerk with 42 days of the date on the clerk's letter informing the parties of the chief judge's order. The petition should be in letter form, addressed to the circuit clerk, and in an envelope marked "*Misconduct Petition*" or "*Disability Petition*". The name of the subject judge must not be shown on the envelope. The letter should be typewritten or otherwise legible. It should begin with "*I hereby petition the judicial council for review of...*" and state the reasons why the petition should be granted. It must be signed.

**Rule 18(d): Untimely Petition.** The clerk must refuse to accept a petition that is received after the deadline in 18(b).

**Rule 18(e): Timely Petition Not in Proper Form.** When the clerk receives a petition for review within the time allowed but in a form that is improper to a degree that would substantially impair its consideration by the judicial council—such as a document that is ambiguous about whether it is intended to be a petition for review—the clerk must acknowledge its receipt, call the filer's attention to the deficiencies, and give the filer the opportunity to correct the deficiencies with 21 days of the date of the clerk's letter about the deficiencies or within the original deadline for filing the petition, whichever is later. If the deficiencies are corrected within the time allowed, the clerk will proceed according to paragraphs (a) and (c) of the Rule. If the deficiencies are not corrected, the clerk must reject the petition.

**Amended Local Rule 18.1(b): Page Limit and Number of Copies:** A petition for review must not be longer than five pages (five sides), or 1,200 words, whichever is less. A complainant may petition the Chief Judge for permission to submit additional pages if extraordinary circumstances exist, and the Chief Judge may delegate the consideration of these requests to the Circuit Executive. The complainant must file an original and one copy of the petition for review, along with a copy of the original complaint.