

FILED

MAY 12 2015

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 14-90181

ORDER

THOMAS, Chief Judge:

Complainant, an attorney appointed under the Criminal Justice Act (CJA), alleges that a judge improperly handled a review of complainant’s CJA payment vouchers by requesting reasonableness reviews in several matters. Any disagreement complainant has with the judge’s decisions is merits-related and is not cognizable in misconduct proceedings. See 28 U.S.C. § 352(b)(1)(A)(ii); In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982); Judicial-Conduct Rule 11(c)(1)(B).

Complainant further alleges that the judge has retaliated and demonstrated bias against him, and is a “bully.” However, adverse decisions do not prove bias, and a review of the judge’s statements in an email exchange provided by the complainant does not support these allegations. Complainant further alleges that he has a confidential “witness” to support his allegations, but does not provide any specific facts upon which a limited inquiry could be made even if the name of the

alleged witness were provided. While lack of judicial temperament may constitute misconduct under some circumstances, given the absence of specific facts here, I cannot conclude that the subject judge's behavior violated the Code of Conduct or constitutes cognizable misconduct under 28 U.S.C. § 351(a) et seq. Accordingly, because there is no evidence of bias or judicial misconduct, this charge is dismissed. See In re Complaint of Judicial Misconduct, 631 F.3d 961, 963 (9th Cir. Jud. Council 2011); 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D); see also Advisory Opinion 66, June 2009 (“Opinions formed by a judge on the basis of facts introduced or events occurring in the course of current or prior proceedings ordinarily do not constitute a basis to show bias ... [E]xpressions of impatience, dissatisfaction, annoyance and even anger directed to an attorney or a party should not be confused with judicial bias.”)

Complainant also alleges that by ordering reasonableness reviews, the judge has caused an improper delay in his receipt of payment. Delay is not cognizable misconduct “unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” Judicial-Conduct Rule 3(h)(3)(B); see In re Complaint of Judicial Misconduct, 567 F.3d 429, 431 (9th Cir. 2009). Complainant has not provided any objective evidence that the alleged delay is habitual or improperly motivated. Because there

is no evidence of misconduct, this charge must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D). Further, a limited inquiry revealed that the CJA reasonableness reviews of complainant's matters are ongoing and nearing completion.

As noted above, I have found no evidence of misconduct on the part of the subject judge in this matter. To the extent that complainant has raised general complaints about how CJA vouchers are reviewed, I note that I have directed the Circuit Executive to conduct a separate administrative review of the CJA voucher processing procedures, which is now underway.

DISMISSED.