

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. 18-90024

ORDER

THOMAS, Chief Judge:

Complainant, an attorney, alleges that a circuit judge improperly denied mandamus relief and misstated the record in a published opinion. These allegations were raised and dismissed in a previous misconduct complaint brought by complainant. See In re Complaint of Judicial Misconduct, No. 17-90055 (9th Cir. Jud. Council Dec. 21, 2017). Accordingly, the previous order makes further action on these charges unnecessary. See 28 U.S.C. § 352(b)(2); In re Complaint of Judicial Misconduct, 563 F.3d 853, 854 (9th Cir. 2009) (“The current complaint merely repeats the charges raised in the prior complaint My prior order therefore makes further action on this complaint unnecessary”); Judicial-Conduct Rule 11(c)(1)(C).

Complainant further alleges that the judge is biased due to personal relationships with a district judge and a senator. In particular, complainant emphasizes that the subject judge once taught law at a university the district judge

attended as an undergraduate, that the senator supported the subject judge's confirmation to the bench, and that the senator and the subject judge's wife are both members of a local "hall of fame." Complainant also speculates that the subject judge may have held ex parte communications with the district judge and that there was an "unstated expectation" that following confirmation the subject judge would serve the senator's "personal interests." These unsupported allegations lack sufficient evidence to raise an inference of bias and are dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 650 F.3d 1370, 1372 (9th Cir. Jud. Council 2011) (rejecting complainant's "invitation for the Judicial Council to conduct a fishing expedition" and explaining that "vague accusations and convoluted demands don't satisfy complainant's obligation to provide objective evidence of misconduct"); In re Complaint of Judicial Misconduct, 569 F.3d 1093 (9th Cir. Jud. Council 2009) ("complainant's vague insinuations do not provide the kind of objectively verifiable proof that we require"); Judicial-Conduct Rule 11(c)(1)(D).

As additional evidence of bias, complainant alleges that during oral argument, the subject judge asked complainant whether he filed a civil suit against the district court judge. A review of the record reveals that it was in fact another judge on the appellate panel who asked this question. In any event, the question

was directly related to the proceedings and would not constitute evidence of bias or other misconduct even if it had been asked by the subject judge.¹ Accordingly, this allegation is dismissed as unfounded and for failure to allege misconduct. See 28 U.S.C. § 352(b)(1)(A)(iii), (b)(1)(B); In re Complaint of Judicial Misconduct, 726 F.3d 1060, 1062 (9th Cir. Jud. Council 2013) (“Because complainant’s charges wouldn’t constitute misconduct even if true, the complaint is dismissed as groundless”); In re Complaint of Judicial Misconduct, 583 F.3d 598 (9th Cir. Jud. Council 2009); Judicial-Conduct Rule 11(c)(1)(A), (D).

Complainant has now filed two misconduct complaints against the same judge raising speculative and unfounded allegations. Complainant is cautioned that a “complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints.” Judicial-Conduct Rule 10(a); see also In re Complaint of Judicial Misconduct, 552 F.3d 1146, 1148 (9th Cir. Jud. Council 2009).

DISMISSED.

¹ To the extent complainant alleges that this issue was irrelevant and should not have been raised sua sponte, such allegation relates directly to the merits of the appellate panel’s ruling and must be dismissed. 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).