

JUL 20 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT****IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 18-90060 and 18-90061

ORDER**THOMAS**, Chief Judge:

Complainant, a pro se litigant, has filed a complaint of judicial misconduct against a district judge and a circuit judge of this circuit. 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 judges 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 improperly dismissed her underlying action “on technicality and not merits,” rejected her claim that an attorney practiced law without a license, and made various other improper rulings in the underlying proceedings. These allegations relate directly to the merits of the judge's rulings 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).

Complainant also alleges that the district judge used derogatory language in an order. Specifically, in dismissing the underlying action with prejudice, the judge noted that even if complainant were allowed “another bite at the apple,” she would be unable to cure the deficiencies of her civil complaint. Complainant alleges that this statement was intended to compare her to “Eve, from the Garden of Eden,” and was an attack on her religious beliefs. Complainant is wrong. Taking “another bite at the apple” is a common and widely-used expression to

describe repetitive litigation, and complainant's allegation is dismissed as frivolous. See 28 U.S.C. § 352(b)(1)(3); Judicial-Conduct Rule 11(c)(1)(C).

Complainant next alleges that the district judge had improper ex parte communications with the opposing party and with the subject circuit judge. Complainant further alleges that both judges are biased and have conspired to violate various laws, conceal crimes, obstruct justice, violate complainant's constitutional rights, and commit various other acts of misconduct. However, adverse rulings are not proof of bias, conspiracy, or other misconduct, and complainant provides no objectively verifiable evidence to support any of these allegations, which are dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 715 F.3d 747, 749 (9th Cir. Jud. Council 2013) ("As we have frequently held, adverse rulings, standing alone, are not proof of misconduct"); In re Complaint of Judicial Misconduct, 650 F.3d 1370, 1371 (9th Cir. Jud. Council 2011); Judicial-Conduct Rule 11(c)(1)(D).

Finally, complainant alleges that the circuit judge, as a member of the Judicial Council, improperly reviewed complainant's petition for review in a previous misconduct proceeding at the same time that he presided over several appeals involving complainant. The mere fact that the same judge presided over multiple actions involving complainant is not proof of misconduct. See In re

Complaint of Judicial Misconduct, 650 F.3d 1370 (9th Cir. Jud. Council 2011).

Moreover, “a failure to recuse may constitute misconduct only if the judge failed to recuse for an improper purpose There’s no evidence that happened here.”

In re Complaint of Judicial Misconduct, 647 F.3d 1181, 1181 (9th Cir. 2011).

Under this circuit’s precedent, an individual “has no right to any particular procedure for the selection of the judge” and is only “entitled to have that decision made in a manner free from bias or the desire to influence the outcome of the proceedings.” Cruz v. Abbate, 812 F.2d 571, 574 (9th Cir. 1987). Because complainant offers no evidence of misconduct to support her claim, this charge must be dismissed. See In re Complaint of Judicial Misconduct, 632 F.3d 1287, 1288 (9th Cir. Jud. Council 2011).

Complainant has now filed three separate misconduct complaints raising repetitive and frivolous 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.