

MAR 2 2017

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

No. 16-90115

ORDER**THOMAS**, Chief Judge:

Complainant, a pro se defendant in a criminal case, alleges that a district judge improperly failed to recuse himself, improperly denied complainant's motion for a continuance, and made various other improper rulings in the underlying case. 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 Complaint of Judicial Misconduct, 647 F.3d 1181 (9th Cir. 2011); 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 judge was disrespectful and used abusive language toward her at several hearings. A review of the record, including the hearing transcripts identified by complainant, belies these allegations. Read in context, the comments cited by complainant were, at most, expressions of frustration or incredulity regarding complainant's arguments or litigation tactics.

This is insufficient to prove bias or other misconduct. See In re Judicial Misconduct, 579 F.3d 1062, 1064 (9th Cir. Jud. Council 2009) (“The transcript . . . indicates that the judge, while frustrated by the tactics of both parties, remained professional and did not exhibit bias. Allegedly improper statements quoted by complainant were, in context, completely benign”); Larson v. Palmateer, 515 F.3d 1057, 1067 (9th Cir. 2008) (“neither adverse rulings nor impatient remarks are generally sufficient to overcome the presumption of judicial integrity”). In sum, a review of the record belies complainant’s claim that the judge treated her in a demonstrably egregious or hostile manner, and this charge is dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 761 F.3d 1097, 1098-99 (9th Cir. Jud. Council 2014); Judicial-Conduct Rules 3(h)(1)(D), 11(c)(1)(D).

Next, complainant alleges that the judge may have a substance abuse problem, based on his statements and demeanor at hearings. A review of the record, including the hearing transcripts identified by complainant, does not reveal any statements or behavior suggesting a substance abuse problem or other disability. Complainant offers no other evidence in support of these wholly speculative allegations, which are dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 583 F.3d 598 (9th Cir.

Jud. Council 2009); 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).

Finally, complainant alleges that the judge coerced her into pleading guilty. These allegations are belied by the record, including complainant’s own sworn statements at her change of plea hearing. This charge is therefore “conclusively refuted by objective evidence.” 28 U.S.C. § 352(b)(1)(B); see also United States v. Davis, 428 F.3d 802, 811 (9th Cir. 2005) (“A defendant’s ‘solemn declarations in open court carry a strong presumption of verity’”).

To the extent complainant raises allegations against FBI agents or the prosecuting attorneys, these allegations are dismissed because this misconduct complaint procedure applies only to federal judges. See In re Complaint of Judicial Misconduct, 632 F.3d 1287, 1288 (9th Cir. Jud. Council 2011); Judicial-Conduct Rule 4.

DISMISSED.