

DEC 21 2017

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALSJUDICIAL COUNCIL  
OF THE NINTH CIRCUITIN RE COMPLAINT OF  
JUDICIAL MISCONDUCT

No. 17-90055

ORDER

THOMAS, Chief Judge:

Complainant, an attorney, alleges that a circuit judge improperly denied mandamus relief, misstated the record in two published opinions, and denied complainant's motion to correct the record. 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 further alleges that the judge made ad hominem attacks in his opinions,<sup>1</sup> accused complainant and others of "lying under oath," and "intentionally prejudiced" complainant. A review of the record reveals no misconduct. The judge did not use demeaning or abusive language, or otherwise treat complainant in an egregious or hostile manner. See In re Complaint of Judicial Misconduct, 761 F.3d 1097, 1098-99 (9th Cir. 2014) ("Misconduct

---

<sup>1</sup> One of the cited opinions was per curiam. However, even assuming the subject judge authored both opinions, there has been no showing of misconduct.

includes . . . treating litigants or attorneys in a demonstrably egregious and hostile manner . . . . The comments here do not meet that standard. The judge did not use demeaning language or heap abuse on anybody”). Contrary to complainant’s allegations, neither opinion accuses complainant (or anyone else) of lying under oath, or suggests that the judge attempted to “discredit” complainant for the judge’s “own benefit.”

To the extent complainant suggests that the judge purposefully misstated the record in order to prejudice complainant, this allegation is entirely speculative. Accordingly, these allegations are dismissed as unfounded and conclusively refuted by objective evidence. See 28 U.S.C. § 352(b)(1)(A)(iii), (B); In re Complaint of Judicial Misconduct, 569 F.3d 1093 (9th Cir. 2009) (“claimant’s vague insinuations do not provide the kind of objectively verifiable proof that we require”); In re Complaint of Judicial Misconduct, 583 F.3d 598 (9th Cir. Jud. Council 2009) (“adverse rulings alone do not constitute proof of bias. Because there is no evidence that misconduct occurred, these charges must be dismissed”); Judicial-Conduct Rule 11(c)(1)(D).

**DISMISSED.**