

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. 17-90099

ORDER

THOMAS, Chief Judge:

Complainants, litigants in a civil action challenging a home foreclosure, allege that a circuit judge caused them to “suffer prejudice and the theft and sale of their home” by denying their appeal. 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).

Complainants also allege that the judge “ordered a criminal act” over fifteen years ago that resulted in property damage. As complainants acknowledge, the district attorney declined to pursue criminal charges, finding that the judge acted in good faith. In light of the prosecutor’s determination that no crime occurred, and because complainants present no objectively verifiable evidence of criminal activity, these allegations must be 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, 583 F.3d 598 (9th Cir. Jud. Council 2009);
Judicial-Conduct Rule 11(c)(1)(D).

Complainants next allege that the judge committed misconduct by attempting to use homeowner's insurance to pay a fine, and "lied to the jury" in a civil trial by claiming that property damage resulted from a miscommunication. It is not misconduct to seek insurance coverage for a debt, nor are disputed facts at a trial evidence of perjury or other misconduct. This allegation is dismissed as unfounded and for failure to allege misconduct. See 28 U.S.C. § 352(b)(1)(A)(iii); 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).

Complainants further allege that the judge is "incapacitated." However, there is no evidence of incapacitation or disability, and accordingly, this allegation is 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); Judicial-Conduct Rule 11(c)(1)(D).

To the extent complainants request that the judge's rulings be reversed or that the judge be removed from the bench, such requests are denied because this type of relief is not available in misconduct proceedings. See 28 U.S.C. § 354(a)(2); Judicial-Conduct Rule 11(a).

DISMISSED.