

**FILED**

FEB 25 2019

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

**JUDICIAL COUNCIL  
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF  
JUDICIAL MISCONDUCT**

No. 18-90125

**ORDER**

**THOMAS**, Chief Judge:

Complainant, a debtor in a bankruptcy proceeding, has filed a complaint of judicial misconduct against a bankruptcy judge. 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 judge 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 judge improperly denied a disqualification motion, failed to issue "cease and desist" orders, allowed an opposing party to file untimely motions, and made various other incorrect 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 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 improperly allowed another judge, who was not assigned to the case, to enter rulings. A review of the underlying docket shows that the case was in fact transferred to the judge in question, due to her previous assignment to a related case. Moreover, "a litigant has no right to any particular procedure for the selection of the judge, so long as the judge is chosen in a manner free from bias or the desire to influence the outcome of the proceedings." In re Complaint of Judicial Misconduct, 650 F.3d 1370, 1371 (9th

Cir. Jud. Council 2011) (internal quotations omitted). This allegation is dismissed as unfounded and conclusively refuted by objective evidence. See 28 U.S.C. § 352(b)(1)(A)(iii), (b)(1)(B); In re Complaint of Judicial Misconduct, 552 F.3d 1146, 1147 (9th Cir. Jud. Council 2009); Judicial-Conduct Rule 11(c)(1)(D).

Complainant further alleges that the judge is biased. However, adverse rulings are not proof of bias, see In re Complaint of Judicial Misconduct, 583 F.3d 598 (9th Cir. Jud. Council 2009), and complainant provides no objectively verifiable evidence to support this allegation. Complainant contends, without any specific evidence or citation to the record, that the judge is “practicing law from the bench” and “litigating for the [opposing party] and trustee.” These vague and conclusory allegations must be dismissed as unfounded. See 28 U.S.C.

§ 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 569 F.3d 1093 (9th Cir. Jud. Council 2009) (“claimant’s vague insinuations do not provide the kind of objectively verifiable proof that we require”); Judicial-Conduct Rule 11(c)(1)(D).

Complainant next alleges that the judge improperly denied a motion to recuse himself. However, the record shows that complainant voluntarily withdrew her recusal motion. In any event, complainant offers no evidence that the judge failed to recuse for any improper purpose, so this charge must be dismissed as merits-related. See 28 U.S.C. § 352(b)(1)(A)(ii); In re Complaint of Judicial

Misconduct, 647 F.3d 1181 (9th Cir. Jud. Council 2011); Judicial-Conduct Rule 11(c)(1)(B).

Finally, complainant alleges that the judge has improperly delayed entering final judgment in the underlying case. A review of the docket shows that the case has proceeded in due course. Moreover, complainant offers no evidence that the alleged delay is based on improper motive, or that the judge has habitually delayed ruling in a significant number of unrelated cases. Accordingly, this charge must be dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 584 F.3d 1230, 1231 (9th Cir. Jud. Council 2009); Judicial-Conduct Rules 3(h)(3)(B), 11(c)(1)(D).

To the extent complainant alleges that she was required to make appearances in various courtrooms within the same courthouse, this allegation is dismissed for failure to allege misconduct. See 28 U.S.C. § 352(b)(1)(A)(iii); In re 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”); Judicial-Conduct Rule 11(c)(1)(A), (D).

To the extent complainant raises allegations against a bankruptcy trustee or a now-retired bankruptcy judge, these allegations are dismissed because this misconduct complaint procedure applies only to current federal judges. See In re

Complaint of Judicial Misconduct, 632 F.3d 1287, 1288 (9th Cir. Jud. Council  
2011); Judicial-Conduct Rule 4.

**DISMISSED.**