

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT****IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 18-90127

ORDER**THOMAS**, Chief Judge:

Complainant, a pro se litigant, has filed a complaint of judicial misconduct against a circuit 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 rejected his arguments, misapplied rules of evidence, imposed a page limit on briefs, and made various other incorrect rulings in the underlying 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).

Complainant also alleges that the judge failed to recuse in an unrelated appeal, where one party was represented by a law firm that had previously represented the judge in an unrelated matter. A review of the docket shows that the judge first learned of this potential conflict more than three years after the appeal was closed, and requested that the Clerk of Court contact the parties and invite them to respond. Neither party requested that any action be taken. The judge acted precisely in accordance with Advisory Opinion No. 71 ("a judge should disclose to the parties the facts bearing on disqualification as soon as those facts are learned, even though that may occur after entry of the decision. The

parties may then determine what relief they may seek”). Moreover, because the judge was not aware of this potential conflict until after the appeal was closed, complaint cannot show that the judge failed to recuse for any improper purpose. Accordingly, this allegation 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) (“Allegations that a judge erred in failing to recuse are generally dismissed as merits-related A failure to recuse may constitute misconduct only if the judge failed to recuse for an improper purpose”); Judicial-Conduct Rule 11(c)(1)(B).

Complainant next alleges that the judge has sat on several appeals involving the same bank that is an opposing party in complainant’s civil case, and that this “gives the appearance of impropriety.” Complainant further speculates that the bank may be “influencing the assignment of appeals.” The bank in question is one of the largest multinational banks in the world, and has been a party to over one hundred Ninth Circuit appeals in the last ten years alone. It is hardly surprising that the subject judge has sat on several panels involving the bank. Moreover, “a litigant has no right to any particular procedure for the selection of [a] 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). Complainant offers no evidence that the subject judge was involved in the assignment of the underlying appeal or acted with an improper motive.

Because complainant offers no objectively verifiable evidence to support his claim that either the judge or the bank has any influence over the assignment of appeals, these allegations must be dismissed as unfounded. See 28 U.S.C.

§ 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 552 F.3d 1146, 1147 (9th Cir. Jud. Council 2009); Judicial-Conduct Rule 11(c)(1)(D).

Finally, complainant alleges that the judge is biased in favor of banks. However, adverse rulings are not proof of bias, conspiracy, or other misconduct, and complainant provides no objectively verifiable evidence to support this allegation, which is 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) (“adverse rulings do not prove bias or conspiracy”); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.