

FILED

JAN 22 2019

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 18-90140

ORDER

THOMAS, Chief Judge:

Complainant, a pro se litigant, has filed a complaint of judicial misconduct against a district 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.

To the extent complainant alleges that the judge improperly denied motions, failed to recuse himself, or made other incorrect rulings, 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. Jud. Council 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 alleges that the judge manipulated court proceedings by “fabricating” a cross-motion for summary judgment by the opposing party. According to complainant, the opposing party filed several “responsive memoranda” to his civil complaint, which the judge mischaracterized as cross-motions for summary judgment. A review of the record shows that the opposing party did in fact request summary judgment, and the judge’s characterization of the pleadings was accurate. In any event, even if the judge had used an incorrect title to refer to a particular motion, this would not amount to misconduct. Accordingly, complainant’s allegation is dismissed as unfounded and for failure to

allege any conduct prejudicial to the effective and expeditious administration of the business of the courts. 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).

Complainant also alleges that the judge is biased against him and has a mental disability. However, adverse rulings are not proof of bias or disability, and complainant provides no objectively verifiable evidence to support these allegations, which are 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”); In re Complaint of Judicial Misconduct, 626 F.3d 540 (9th Cir. Jud. Council 2010) (“rulings are not proof of a disability”); Judicial-Conduct Rule 11(c)(1)(D).

Complainant further alleges that the judge improperly delayed ruling on an “emergency motion.” A review of the record shows that the judge ruled on the subject motion less than sixty days after it was filed, and specifically denied

complainant's motion to expedite. A review of the underlying docket shows that the case has proceeded in due course, and in any event, complainant offers no evidence that any alleged delay was based on improper motive, or that the district judge has habitually delayed ruling in a significant number of unrelated cases.

Accordingly this charge must be dismissed. See Judicial-Conduct Rule 3(h)(3)(B); In re Complaint of Judicial Misconduct, 584 F.3d 1230, 1231 (9th Cir. Jud. Council 2009).

Finally, complainant alleges that the judge used an extremely hostile, demeaning and condescending tone with complainant. As evidence, complainant notes that the judge rejected some of his arguments as "frivolous" or for "lack of standing." These are common legal terms and are not evidence of egregious or hostile treatment. Moreover, a review of the underlying record, including relevant hearing transcripts and orders, reveals no evidence of a hostile treatment or demeanor on the part of the subject judge. Accordingly, these allegations are dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 761 F.3d 1097, 1099 (9th Cir. Jud. Council 2014) ("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") (internal quotations

omitted); In re Complaint of Judicial Misconduct, 583 F.3d 598 (9th Cir. Jud.

Council 2009); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.