

FILED

MAR 25 2019

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 19-90047

ORDER

THOMAS, Chief Judge:

Complainant, a litigant in a civil case, 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 “threw out precedent” from an earlier appellate panel and failed to recuse himself. 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 Judicial Misconduct, 756 F.3d 1143, 1144 (9th Cir. Jud. Council 2014) (“Allegations that a judge erred in failing to recuse are merits-related and must be dismissed”); 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 is racially biased and mentally disabled. 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 Judicial Misconduct, 626 F.3d 540 (9th Cir. Jud. Council 2010); In re Complaint of Judicial Misconduct, 583 F.3d 598 (9th Cir. Jud. Council 2009); Judicial-Conduct Rule 11(c)(1)(D).

Finally, complainant alleges that the judge has a conflict of interest based on work he performed as an attorney prior to joining the bench. The prior work cited by complainant is entirely unrelated to any parties or legal issues raised in the underlying civil case, and complainant's vague and speculative allegations raise no inference of misconduct or a conflict of interest. Accordingly, this charge is dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 756 F.3d 1143, 1144 (9th Cir. Jud. Council 2014) (“there is no evidence that any conflict was brought to the judge’s attention. Nor is there evidence that such a conflict existed. The allegations are therefore dismissed as baseless”); 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”); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.