

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. 19-90060

ORDER

THOMAS, Chief Judge:

Complainants, pro se litigants in a civil case, have filed a complaint of judicial misconduct against a magistrate 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 complainants 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.

Complainants allege that the judge improperly dismissed their federal constitutional claims, improperly granted summary judgment, 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).

Complainants further allege that the judge is "defiant" of the court of appeals, citing the fact that one of the judge's rulings was reversed in part. However, "a single reversal, or even a handful of reversals, doesn't prove misconduct The number of erroneous rulings must be large enough that it could constitute a pattern." In re Complaint of Judicial Misconduct, 631 F.3d 961, 962-63 (9th Cir. Jud. Council 2011) (internal quotations omitted). Moreover, complainants must "present clear and convincing evidence that [a] series of erroneous rulings reflects the judge's virtually habitual, arbitrary and intentional

departure from prevailing law.” Id (internal quotations omitted). Complainants’ allegations fall well short of this standard, and must be dismissed. 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).

Next, complainants allege that the judge held an improper, unrecorded ex parte communication with opposing counsel. Specifically, complainants allege that immediately before a pretrial conference, the judge (in open court and with complainants present) informed opposing counsel that she had not yet filed a notice of appearance, and should do so. This conversation was not recorded, as the courtroom clerk had not yet begun recording the pretrial conference proceedings. Complainants allege that the judge purposefully held this conversation “off the record” in order to avoid objection or appellate review. Complainants raised this same allegation in a motion to disqualify, which the judge denied on the grounds that (1) complainants offered no proof that the judge knew the conversation was unrecorded, (2) complainants were in the same courtroom and presumably overheard the conversation, and (3) nothing prevented complainants from addressing the notice of appearance issue. In light of this record, complainants fail to show that the judge engaged in any improper ex parte communication, and this allegation is 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, 552 F.3d 1146, 1147 (9th Cir. 2009); Judicial-Conduct Rule 11(c)(1)(D).

Finally, complainants allege that the judge is biased and should have recused herself based on a deceased family member's alleged, unrelated prior conviction. Complainants also allege that in denying a motion to stay the case, the judge engaged in an "ad hominem attack" by referencing the fact that complainants have been declared vexatious litigants in an unrelated case. Complainants' allegations fail to raise any inference of bias, hostility, or other misconduct. See, e.g., In re Complaint of Judicial Misconduct, 816 F.3d 1266, 1267 (9th Cir. Jud. Council 2016) ("The Supreme Court has recognized only a few circumstances in which an appearance of bias necessitates recusal Typically, the Supreme Court has only mandated recusal where a judge has a direct, personal, or substantial connection to the outcome of a case or to its parties") (internal quotations omitted); 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). Accordingly, these allegations must be

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); 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).

DISMISSED.