

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. 19-90085

ORDER

THOMAS, Chief Judge:

Complainant, a 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.

First, complainant alleges that the judge refused to certify a question to the state supreme court and made various 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 is biased in favor of opposing counsel's law firm because she has "worked with attorneys" from that firm as a member of the federal bar association, has colleagues on the court who were previously employed by the firm, and has received recognition at bar events sponsored in part by the firm. However, allegations that a judge has had social or professional interactions with members of a particular firm are not sufficient to raise an inference that misconduct has occurred. Indeed,

[c]omplete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not

become isolated from the society in which the judge lives. As a judicial officer and a person specially learned in the law, a judge is in a unique position to contribute to the law . . . [and] is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the law.

Code of Conduct for United States Judges, Commentary to Canon 4.

Accordingly, this charge is dismissed as unfounded and for failure to allege misconduct. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 828 F.3d 1179, 1180 (9th Cir. Jud. Council 2016) (“It is not evidence of misconduct that the subject judges are members of the bar and have served on bar committees”); 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, 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)(A), (D).

Next, complainant alleges that the judge has improperly delayed the case “in order to curry favor with the financial services industry.” A review of the underlying docket reveals that the case has proceeded in due course. Moreover, complainant offers no objectively verifiable proof in support of this speculative

allegation. Accordingly, this charge 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); 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.