

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. 19-90091

ORDER

THOMAS, Chief Judge:

Complainant, a civil 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.

Complainant alleges that the judge made improper evidentiary and discovery-related 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 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 made various hostile remarks and exhibited bias against complainant. In particular, complainant cites a hearing during which the judge commented that because complainant drives an expensive car and lives in an expensive building, he would be capable of paying the large money judgment entered against him. The judge also noted that he ordered federal marshals to be present because he considered complainant a security risk, and because the judge wanted the marshals to recognize complainant in case he failed to appear for future hearings. Complainant points to statements by the judge characterizing complainant's arguments as "gibberish," and suggesting that

complainant would be living on the street or “pushing a grocery cart” if necessary to pay the judgment.

“As always, in assessing these matters, context is important.” In re Judicial Misconduct, 906 F.3d 1167, 1169 (9th Cir. Jud. Council 2018). The judge’s comments, viewed in isolation, were pointed and perhaps castigating. However, a review of the full hearing transcript reveals that the judge was frustrated by complainant’s litigation tactics, and in particular, by complainant’s decision to create a website impersonating or parodying the judge. The judge also noted that complainant had posted a “wild diatribe” on the internet about the case and had made inflammatory or threatening statements about opposing counsel. Moreover, a review of the underlying transcript clarifies that the judge’s “grocery cart” comment was made in the context of illustrating how aggressively complainant’s creditors were likely to pursue complainant’s assets in order to enforce the judgment. Read in context, the judge’s comments were, at most, expressions of frustration or incredulity regarding complainant’s arguments, litigation tactics, and behavior in the underlying proceedings. The judge did not treat complainant in a demonstrably egregious or hostile manner. Accordingly, this allegation must be dismissed as unfounded and conclusively refuted by objective evidence. See 28 U.S.C. § 352(b)(1)(A)(iii), (b)(1)(B); In re Complaint of Judicial Misconduct, 761

F.3d 1097, 1098-99 (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. His statements were blunt but measured expressions of frustration”) (internal quotations and citations omitted); In re Complaint of Judicial Misconduct, 579 F.3d 1062, 1064 (9th Cir. Jud. Council 2009) (“the judge, while frustrated by the tactics of both parties, remained professional and did not exhibit bias. Allegedly improper statements quoted by complainant were, in context, completely benign”); Judicial-Conduct Rule 11(c)(1)(D); see also In re Complaint of Judicial Misconduct, 650 F.3d 1370, 1371 (9th Cir. Jud. Council 2011) (“adverse rulings do not prove bias”).

Finally, complainant notes that the judge has received negative anonymous comments on a website that “rates” federal judges. However, “[a]nonymous, general comments by unknown persons about unspecified cases cannot serve as proof of misconduct.” In re Complaint of Judicial Misconduct, No. 13-90174 (9th Cir. Jud. Council Nov. 18, 2014). Moreover, the vague and conclusory comments and opinions cited by complainant do not give rise to any inference of misconduct. Accordingly, this allegation is dismissed as unfounded and for failure to allege cognizable misconduct. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of

Judicial Misconduct, 569 F.3d 1093 (9th Cir. Jud. Council 2009) (“complainant’s vague insinuations do not provide the kind of objectively verifiable proof that we require”); Judicial-Conduct Rule 11(c)(1)(A), (D).

DISMISSED.