

SEP 16 2019

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS**JUDICIAL COUNCIL  
OF THE NINTH CIRCUIT****IN RE COMPLAINT OF  
JUDICIAL MISCONDUCT**Nos. 19-90128, 19-90129,  
19-90130 and 19-90131**ORDER****GRABER**<sup>1</sup>, Circuit Judge:

Complainant, a litigant, has filed a complaint of judicial misconduct against two circuit judges, a district judge of this circuit, and a district judge of another circuit who sat by designation in complainant's underlying appeal. 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 judges 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

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<sup>1</sup> This complaint was assigned to Circuit Judge Susan P. Graber pursuant to 28 U.S.C. § 351(c).

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 district judge who presided in his underlying civil case improperly granted a motion to dismiss, made rulings that were inconsistent with settlement conference discussions, and made various other incorrect rulings in the underlying case. Complainant also alleges that an appellate panel improperly affirmed and denied a petition for rehearing. These allegations relate directly to the merits of the judges’ 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 alleges that another district judge, visiting from another circuit, was improperly allowed to sit by designation in the underlying appeal.

Specifically, complainant alleges that (1) he previously filed a civil action in the visiting judge's district, which should have disqualified the judge, (2) the visiting judge's district has a "shortage of judges," and therefore should not allow its judges to sit by designation, and (3) the visiting judge should have recused himself because he attended the same college as one witness' parent. However, "a litigant has no right to any particular procedure for the selection of [a] judge, so long as the judge is chosen in a manner free from bias or the desire to influence the outcome of the proceedings." In re Complaint of Judicial Misconduct, 650 F.3d 1370, 1371 (9th Cir. Jud. Council 2011) (internal quotations omitted). The fact that a judge visits from a district where a litigant previously appeared, or that the district is allegedly understaffed, or that the judge attended the same college as a witness' relative, is not proof of bias or a desire to influence the outcome of a case. Accordingly, these allegations must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); In re 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, 552 F.3d 1146, 1147 (9th Cir. Jud. Council 2009) ("Because there isn't sufficient evidence to raise an inference that misconduct occurred, these charges must be dismissed"); Judicial-Conduct Rule 11(c)(1)(A), (D).

Finally, complainant alleges that the subject judges conspired with the opposing parties, “shunned ethics,” and violated his right to due process. However, adverse rulings are not proof of bias or other misconduct, 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) (“adverse rulings, standing alone, are not proof of misconduct”); 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).

To the extent complainant raises allegations against the opposing parties, such allegations are dismissed because this misconduct complaint procedure applies only to federal judges. See In re Complaint of Judicial Misconduct, 632 F.3d 1287, 1288 (9th Cir. Jud. Council 2011); Judicial-Conduct Rule 1(b).

**DISMISSED.**