

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. 21-90009

ORDER

THOMAS, Chief Judge:

A judicial misconduct case has been filed 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[s] 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.

This misconduct complaint arises out of a class action in which complainant was a class representative. Complainant alleges that the district judge was biased against complainant's attorneys, and by extension, was biased against complainant. In support of his allegation, complainant claims that the district judge helped defense counsel by advising them to make an objection during trial. A review of the trial transcript reveals that no such interaction occurred. Complainant provides no other objectively verifiable evidence in support of this allegation of bias. 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, 650 F.3d 1370, 1371 (9th Cir. Jud. Council 2011) ("adverse rulings do not prove bias or conspiracy"); 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)(D).

Complainant next alleges that the judge exhibited poor judicial

temperament. Complainant claims that the judge screamed at complainant's attorneys and stormed off after a temper tantrum. A review of the transcripts in the case indicates that no such incident occurred. This allegation is refuted by the record and must be dismissed. See 28 U.S.C. § 352(b)(1)(B).

Complainant also alleges that the judge erroneously ruled that complainant was not entitled to free speech. This allegation is related to the merits of the case and must be dismissed on that ground. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B); In re Complaint of Judicial Misconduct, 579 F.3d 1062, 1064 (9th Cir. Jud. Council 2009).

Finally, complainant alleges that the judge knew that a defense witness committed perjury but did not challenge him. A review of the transcript does not reveal any interactions that would support this allegation, and complainant provides no other objectively verifiable evidence in support of this allegation, which is dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii).

DISMISSED.