

FILED

MAY 4 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 21-90015, 21-90016
and 21-90017

ORDER

THOMAS, Chief Judge:

Complainant, a pro se litigant, has filed a complaint of judicial misconduct against three district judges. 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.

Complainant filed a civil complaint against a state economic assistance agency. Complainant alleges that the judge assigned to the case should have recused herself because the judge allegedly previously mishandled an unrelated case complainant was involved in. Allegations that a judge erred in failing to recuse are generally dismissed as merits-related. 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). However, “failure to recuse may constitute misconduct only if the judge failed to recuse for an improper purpose.” In re Judicial Misconduct, 605 F.3d 1060, 1062 (9th Cir. 2010). Complainant provides no objectively verifiable evidence of an improper purpose. Additionally, a review of the docket reveals that the judge recused herself. This allegation is dismissed as failing to allege misconduct. See 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant next alleges that the district judge found deficiencies in her civil complaint as a ploy to dismiss the case. Complainant provides no objectively

verifiable evidence in support of this allegation. A review of the record reveals that the judge provided a clear explanation for each deficiency and provided complainant with multiple opportunities to cure the deficiencies. Accordingly, 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, 569 F.3d 1093 (9th Cir. 2009) (“claimant’s vague insinuations do not provide the kind of objectively verifiable proof that we require”); In re Complaint of Judicial Misconduct, 583 F.3d 598 (9th Cir. Jud. Council 2009) (“adverse rulings alone do not constitute proof of bias. Because there is no evidence that misconduct occurred, these charges must be dismissed”); Judicial-Conduct Rule 11(c)(1)(D).

Complainant alleges that another district judge improperly denied her request to recuse the first judge, referenced in the preceding paragraphs. This allegation directly relates to the merits of the case 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).

Finally, complainant alleges that she requested a magistrate judge to handle her case, but ultimately, a district judge issued the order dismissing the case. She argues that the judge was biased against her and did not acknowledge that

complainant filed an amended complaint. Complainant was provided with two opportunities to cure the deficiencies in her complaint. Though she filed a first amended complaint, her case was dismissed because she failed to file a second amended complaint after her first amended complaint was dismissed with leave to amend. Furthermore, a litigant does not have the “right to any particular procedure for the selection of the judge” but the judge must be chosen “in a manner free from bias or the desire to influence the outcome of the proceedings.” Cruz v. Abbate, 812 F.2d 571, 574 (9th Cir. 1987). Complainant does not provide any objectively verifiable evidence that the district judge was assigned to the case based on an improper motive and this allegation must be dismissed.

DISMISSED.