

**FILED**

AUG 10 2023

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

**JUDICIAL COUNCIL  
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF  
JUDICIAL MISCONDUCT**

No. 22-90068

**ORDER**

**MURGUIA**, Chief Judge:

Complainant, a pro se 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 district judge has not been “fair, neutral nor unbiased.” In support of this allegation, complainant states that the judge has a history of recusing herself from controversial cases related to the governing bodies in the judge's district. However, complainant fails to provide any objectively verifiable evidence in support of this allegation, which is dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii) (listing reasons the chief judge may decide to dismiss the complaint, including claims that are frivolous or lacking sufficient evidence to raise an inference that misconduct has occurred); In re Complaint of Judicial Misconduct, 900 F.3d 1163 (9th Cir. 2018) (dismissing as unfounded allegations that subject judges engaged in racketeering, conspiracy, and other criminal acts because complainant failed to provide objectively verifiable evidence in support of these allegations); Judicial-Conduct Rule 11(c)(1)(D).

Complainant also alleges that the judge denied him his constitutional rights. In support of this allegation, complainant points to “the judge's overt obstructionism, conspiratorial behavior in denying my cases active and effective.”

Complainant also states that the judge is prejudiced against him in all of his cases. Complainant does not provide any objectively verifiable evidence in support of these allegations and adverse rulings do not constitute misconduct. See In re Complaint of Judicial Misconduct, 687 F.3d 1188 (9th Cir. Jud. Council 2012) (“adverse rulings alone do not constitute proof of bias”). Moreover, a review of the underlying cases that complainant listed in his misconduct complaint reveals that complainant wanted one of his cases dismissed while the two other cases were dismissed because complainant failed to cure the complaints’ deficiencies. This allegation is therefore “conclusively refuted by objective evidence” and must be dismissed. 28 U.S.C. § 352(b)(1)(B). Additionally, these allegations are related to the merits of the underlying cases and must be dismissed on that ground as well. See 28 U.S.C. § 352(b)(1)(A)(ii) (listing reasons the chief judge may decide to dismiss the complaint, including claims directly related to the merits of a decision).

Next, complainant alleges that the judge refused to take action on his filings in a timely manner. But delay is not misconduct “unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” Judicial-Conduct Rule 4(b)(2). Complainant provides no evidence of improper motive or habitual delay. Accordingly, this allegation must be dismissed.

Finally, complainant alleges that the judge is a “pro-illegal immigration, Jurist, that will allow the importation of cocaine from a politically placed white mans child.” Complainant does not provide any objectively verifiable evidence in support of this conclusory statement. Therefore, this allegation is dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii) (listing reasons the chief judge may decide to dismiss the complaint, including claims that are frivolous or lacking sufficient evidence to raise an inference that misconduct has occurred); 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.**