

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 23-90035

ORDER

MURGUIA, Chief Judge:

Complainant, an attorney, has filed a complaint of judicial misconduct against a circuit 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 circuit judge wrongly failed to recuse himself *sua sponte*. Allegations that a judge erred in failing to recuse are merits-related and must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 4(b)(1); 11(c)(1)(B).

Although an allegation that a judge presided over a case with a known conflict of interest may present a viable claim of judicial misconduct, complainant provides no evidence that any potential conflict was brought to the judge's attention. See In re Complaint of Judicial Misconduct, 756 F.3d 1143, 1144 (9th Cir.), aff'd sub nom. In re Complaint of Judicial Misconduct, 768 F.3d 998 (9th Cir. Jud. Council 2014). Nor is there any evidence in the record that a conflict existed. See In re Complaint of Judicial Misconduct, 816 F.3d 1266 (9th Cir. Jud. Council 2016) (explaining that prior professional association, including service on a board, did not give rise to the appearance of impropriety, or require recusal). The allegations are therefore dismissed as baseless. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant next alleges that the circuit judge aided and abetted a conspiracy involving parties both named and unnamed in the underlying matter. Complainant offers speculative theories, including that the circuit judge intervened to secure a place on the panel hearing the appeal. But because complainant offers no evidentiary support, and none can be found in the record, 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 lack sufficient evidence to raise an inference that misconduct occurred); In re Complaint of Judicial Misconduct, 900 F.3d 1163 (9th Cir. Jud. Council 2018) (dismissing as unfounded allegations that subject judges engaged in 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).

Finally, complainant alleges that the circuit judge breached a duty to protect her during oral arguments. The record reflects that the judge conducted the hearing with all due dignity and respect, and this allegation is dismissed as unfounded. See Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.