

Dec. 14 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT****IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 22-90030

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 the 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 should have recused herself from the underlying civil case due to a conflict of interest. This allegation relates directly to the merits of the judge's rulings and must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); In re Complaint of Judicial Misconduct, 647 F.3d 1181 (9th Cir. Jud. Council 2011) ("Allegations that a judge erred in failing to recuse are generally dismissed as merits-related."); Judicial-Conduct Rule 11(c)(1)(B). A failure to recuse may constitute misconduct only if the judge failed to recuse for an improper purpose; there is no evidence of an improper purpose here. See Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice 146 (2006); In re Complaint of Judicial Misconduct, 605 F.3d 1060, 1062 (9th Cir. Jud. Council 2010). Additionally, a review of the docket reveals that the complainant did not appeal the judge's denial of the motion to disqualify. See generally United States v. McTiernan, 695 F.3d 882, 891 (9th Cir.2012) ("Rulings on motions for recusal are reviewed under the abuse-of-discretion standard.")

Complainant next alleges that the district judge is biased against pro se litigants, favors law enforcement, and impeded complainant's access to the courts. Complainant does not identify any evidence in support of these allegations which are dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 900 F.3d 1163, 1165–66 (9th Cir. Jud. Council 2018); Judicial-Conduct Rule 11(c)(1)(D).

Complainant also alleges that the district judge erroneously classified the complainant as a prisoner. A review of the docket reveals that the district judge explicitly acknowledged the complainant is not a prisoner but provided template prisoner civil rights forms to assist the complainant in filing a more concise and clear amended complaint. This allegation is therefore “conclusively refuted by objective evidence” and must be dismissed. 28 U.S.C. § 352(b)(1)(B).

DISMISSED.