

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. 22-90042

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.

This misconduct complaint arises out of complainant's civil rights case against a homeless shelter. Complainant alleges that the district judge included racist citations in the order granting the defendant's motion for summary judgment. Complainant further alleges that the order implied that members of minority groups are not welcome to access the courts. The complainant has not provided any specific examples in support of these allegations and a review of the summary judgment order does not reveal any improper or discriminatory language. Thus, the complainant's conclusory allegations are 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, 687 F.3d 1188 (9th Cir. Jud. Council 2012) ("adverse rulings alone do not constitute proof of bias"); Judicial-Conduct Rule 11(c)(1)(D).

Complainant next alleges that the district judge should have recused himself because the judge used to work for the police, the complainant referenced the

police in the underlying civil rights case, and a reasonable person would assume the judge was partial to the police. A review of the docket reveals that the underlying case involved alleged misconduct by security guards, not police officers. Moreover, there is no evidence that the district judge was previously employed by law enforcement or is biased in favor of law enforcement and the complainant fails to provide any evidence in support of these allegations.

Accordingly, the allegations of bias or conflict of interests are dismissed for failure to raise an inference of misconduct. See 28 U.S.C. § 352(b)(1)(A)(iii);

In re Complaint of Judicial Misconduct, 828 F.3d 1179, 1180 (9th Cir. Jud.

Council 2016) (“complainant offers no evidence to support her allegation that the judges are biased because they have personal friendships with the defendants”);

Judicial-Conduct Rule 11(c)(1)(D).

Finally, the complainant alleges that the district judge engaged in misconduct during a case management conference because the judge acted “like the lawyer for the defendant” by giving an excuse as to “why the defendants should not produce the video surveillance footage” and shortly thereafter “dismissed [the] case.” Complainant fails to provide details or examples of the alleged improper statements made by the judge during the case management conference and adverse rulings alone are not proof of misconduct. 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) (“[A]dverse rulings, standing alone, are not proof of misconduct”); Judicial-Conduct Rule 11(c)(1)(D). To the extent that the complainant is challenging the rulings made in the underlying case, these allegations are merits related and must be dismissed on that ground. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B).

DISMISSED.