

FILED

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 23-90028

ORDER

MURGUIA, Chief Judge:

Complainant, a prisoner, 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 denied all his motions without issuing findings of fact. The record reflects that all motions were either ruled on or rejected as improperly filed. Moreover, there is no requirement to make factual findings before resolving a motion. Accordingly, this allegation is dismissed as belied by the record and 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 lacking sufficient evidence to raise an inference that misconduct has occurred); Judicial-Conduct Rule 11(c)(1)(A) (an allegation of “conduct that, even if true, is not prejudicial to the effective and expeditious administration of the business of the courts” may be dismissed).

Complainant next alleges that the district judge refused to allow him to speak in court. A review of the record reflects that complainant was either represented by counsel during hearings or that his own disruptive conduct during hearings caused him to not be heard. Accordingly, this allegation is dismissed as belied by the record and unfounded. See id.

Complainant next alleges that the district judge is in a conspiracy with defense counsel and the prosecutor, and is biased. However, complainant offers no evidence to support this and none can be found in the record. These conclusory allegations are dismissed as baseless and unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 569 F.3d 1093 (9th Cir. Jud. Council 2009) (“complainant’s vague insinuations do not provide the kind of objectively verifiable proof that we require”); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.