

**JUDICIAL COUNCIL  
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF  
JUDICIAL MISCONDUCT**

No. 23-90104

**ORDER**

**MURGUIA**, Chief Judge:

Complainant, a pro se 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 first claims that the district judge should have recused himself from hearing the case because the district judge had been allegedly assigned complainant's state court case in 2010. The record does not indicate any motion to recuse raising these allegations was filed in district court. 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).

Complainant next alleges that the district judge was biased against him because the district judge had been assigned complainant's state court case in 2010. Complainant's allegation is belied by the record, which does not demonstrate any bias by the district judge. Thus, 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 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) ("complainant's

vague insinuations do not provide the kind of objectively verifiable proof that we require”); Judicial-Conduct Rule 11(c)(1)(D).

Complainant also raises allegations against his former attorney, and also argues the merits of his state court criminal conviction. Such allegations must be dismissed as outside the scope of this proceeding. Judicial-Conduct Rule 1(a), (b).

Finally, complainant requests appointment of counsel. This request is denied as appointment of counsel is not available in this proceeding.

**DISMISSED.**