

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. 24-90133

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 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 filed two §1983 complaints. This complaint of judicial misconduct makes several allegations against the district judge who presided over both of his cases. He first alleges that the district judge robbed him by accepting payment of his filing fee before dismissing the first case. The record reflects that complainant paid the filing fee without first applying for in forma pauperis status. Because complainant failed to show any wrongdoing by the district judge, this allegation is dismissed as unfounded and as an impermissible challenge to the merits of the judge's decision. *See* 28 U.S.C. § 352(b)(1)(A)(ii), (iii) (listing reasons the chief judge may decide to dismiss the complaint, including that claims are directly related to the merits of a decision, or that claims are lacking sufficient evidence to raise an inference that misconduct has occurred); Judicial-Conduct Rule 11(c)(1)(B), (D).

Next, complainant alleges that the district judge wrongly refused to recuse himself. This allegation is dismissed because “[c]ognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling,

including a failure to recuse.” Judicial-Conduct Rule 4(b)(1); 11(c)(1)(B).

Complainant also alleges that the district judge failed to rule on several of his motions. A review of the record demonstrates that the judge issued orders resolving complainant’s motions. Accordingly, this allegation is dismissed because it is belied by the record. *See* 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant alleges that the district judge exhibited bias by granting all of the defendants’ requests for extensions of time, conspired with the defendants to murder him, and that the judge “illegally destroyed evidence” as part of the conspiracy. Adverse rulings are not proof of bias. *See In re Complaint of Judicial Misconduct*, 838 F.3d 1030 (9th Cir. Jud. Council 2016). Because complainant has offered no objectively verifiable evidence to support these baseless allegations, they are dismissed as 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) (“claimant’s vague insinuations do not provide the kind of objectively verifiable proof that we require”); Judicial-Conduct Rule 11(c)(1)(D).

Finally, complainant alleges that the district judge “illegally denied” his motions. This allegation is dismissed because it relates directly to the merits of the judge’s decisions. *See* 28 U.S.C. § 352(b)(1)(A)(ii); *In re Complaint of Judicial*

Misconduct, 838 F.3d 1030 (9th Cir. Jud. Council 2016) (dismissing as merits related allegations that a judge made various improper rulings in a case); Judicial-Conduct Rule 11(c)(1)(B).

DISMISSED.