

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**

Nos. 24-90145, 24-90146

ORDER

MURGUIA, Chief Judge:

Complainant, a pro se litigant, has filed a complaint of judicial misconduct against a district judge and a magistrate 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 judges 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 a federal lawsuit concerning a state court conservatorship proceeding, among other things. She raises several allegations against the magistrate judge and district judge assigned to her federal proceeding.

First, she alleges that the magistrate judge issued an order that amounted to misconduct because it prevented access to the courts and violated equal protection principles. Underlying complainant's allegation is a disagreement with the magistrate judge's ruling. However, adverse rulings are not proof of misconduct. *See In re Complaint of Judicial Misconduct*, 838 F.3d 1030 (9th Cir. Jud. Council 2016). This allegation is dismissed because it relates directly to the merits of the magistrate judge's decision. *See* 28 U.S.C. § 352(b)(1)(A)(ii) (listing reasons the chief judge may decide to dismiss the complaint, including that claims are directly related to the merits of a decision); *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).

Complainant next alleges that the magistrate judge demonstrated bias and prejudice based on her pro se status. Complainant offers many examples of alleged conduct she believes supports this claim, including that the magistrate judge applied the wrong legal standard, improperly set scheduling deadlines, and misconstrued or failed to acknowledge her arguments. Complainant fails to establish that the magistrate judge committed any error. Rather, complainant is merely challenging the magistrate judge's decisions in the case and adverse rulings alone are not proof of misconduct. These allegations are dismissed as unfounded and because they relate directly to the merits of the magistrate judge's decisions. *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).

Complainant alleges that the district judge also demonstrated bias and prejudice based on her pro se status. As support, complainant alleges that the district judge failed to conduct a de novo review or provide independent analysis before adopting the magistrate judge's recommendations. However, the record reflects that the district judge stated that he "engaged in a de novo review" and had

reviewed all the relevant information and filings on the docket. Accordingly, this allegation is dismissed because it is belied by the record. Further, to the extent complainant alleges that the district judge exhibited bias or prejudice, the allegation is 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, to the extent complainant challenges the amount or quality of the analysis included in the district judge’s order, the allegation is dismissed because it relates directly to the merits of the district judge’s decision. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B).

Complainant next alleges that the district judge “may have a conflict of interest.” Complainant notes that before being elevated to the federal bench decades ago, the district judge was appointed to the state superior court by the same governor who appointed the judge who handled the conservatorship in state court, which is at the heart of complainant’s federal litigation. She offers no proof of an improper relationship or any kind of influence between these judges. Accordingly, this allegation is dismissed as unfounded and because the conduct described “is not prejudicial to the effective and expeditious administration of the

business of the courts.” *See* 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(A), (D).

Finally, complainant alleges that the district judge “is experiencing diminished capacity to perform judicial functions,” showing “signs of memory loss” and possibly suffering from “early onset dementia.” She offers absolutely nothing to support this speculation, other than her perception that the district judge caught and corrected his own misstatements. This falls far short of the objectively verifiable evidence required to support the allegation, which is dismissed as unfounded. *See* 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.