

FILED

OCT 3 2018

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 18-90101, 18-90102
and 18-90103

ORDER

THOMAS, Chief Judge:

Complainant, a pro se prisoner, has filed a complaint of judicial misconduct against three circuit judges and 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 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's allegations are unclear, and several appear to be non-cognizable in these proceedings. To the extent complainant alleges that the circuit judges improperly denied his application to file a second-or-successive habeas petition, or improperly denied other motions, such allegations relate directly to the merits of the judges' rulings and must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982); Judicial-Conduct Rule 11(c)(1)(B). Similarly, to the extent complainant alleges that the district judge improperly closed his case, this allegation too must be dismissed as merits-related. Id.

To the extent complainant alleges that the district judge improperly delayed ruling in an underlying civil case, complainant offers no evidence that the alleged delay is based on improper motive, or that the judge has habitually delayed ruling in a significant number of unrelated cases. Accordingly, this charge must be

dismissed. See Judicial-Conduct Rule 3(h)(3)(B); In re Complaint of Judicial Misconduct, 584 F.3d 1230, 1231 (9th Cir. Jud. Council 2009).

To the extent complainant makes allegations against state judges or prison officials, such allegations are dismissed because this misconduct complaint procedure applies only to federal judges. See In re Complaint of Judicial Misconduct, 632 F.3d 1287, 1288 (9th Cir. Jud. Council 2011); Judicial-Conduct Rule 4.

Complainant's request that the Judicial Council order the state supreme court to redress violations of his First and Fifth Amendment rights is denied because this type of relief is not available in judicial misconduct proceedings. 28 U.S.C. § 354(a)(2); In re Complaint of Judicial Misconduct, 630 F.3d 1262 (9th Cir. Jud. Council Jan. 12, 2011); Judicial-Conduct Rule 11(a).

DISMISSED.