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

JUDICIAL COUNCIL

OF THE NINTH CIRCUIT

IN RE COMPLAINT OF	Nos. 25-90138, 25-90139
JUDICIAL MISCONDUCT	**ORDER**

MURGUIA, Chief Judge:

Complainant has filed a complaint of judicial misconduct against a magistrate judge 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 name 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, the family member of a criminal defendant, raises a number of unfounded allegations against the magistrate judge. However, the magistrate judge is now retired. The rules governing misconduct only apply to active judges, so the magistrate judge's recent retirement is an intervening event that renders "action on the complaint no longer necessary." *See* Judicial-Conduct Rules 1(b), 11(a)(3); Judicial-Conduct Rule 1 ("[a]s long as the subject of a complaint retains the judicial office and remains a covered judge as defined in Rule 1(b), a complaint must be addressed.").

Complainant also argues that the district judge should have 1) ordered the criminal defendant released from pretrial detention, and 2) dismissed the defendant's indictment. "Any allegation that calls into question the correctness of an official decision or procedural ruling of a judge — without more — is merits-related. The phrase 'decision or procedural ruling' is not limited to rulings issued in deciding Article III cases or controversies." Commentary on Judicial-Conduct Rule 4. These allegations directly challenge the correctness of the judge's

decisions; therefore, these allegations are dismissed as a challenge to the merits of the district judge's decisions. *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).

Finally, complainant alleges the district judge should not have allowed the government to coerce a plea agreement from the criminal defendant. There is no evidence presented that the defendant's plea agreement was coerced, or that the district judge knew about any coercion and allowed it to occur. Therefore, this allegation is dismissed as unfounded. *See* 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.