

FILED

June 22 2023

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 21-90141 and 21-90142

ORDER

MURGUIA, Chief Judge:

Complainant, a pro se prisoner, 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 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.

This misconduct complaint arises out of a petition for writ of habeas corpus related to claims that complainant's criminal trial was unfair. Complainant alleges that the district judge and the magistrate judge disregarded clearly established laws and ruled contrary to the evidence presented because they wanted to maintain a wrongful conviction. In support of these allegations, complainant points to the rulings made in the case. However, a review of the docket reveals that the petition was dismissed because it was procedurally defaulted and untimely. Regardless, these allegations relate to the merits of the case and must be dismissed on that ground. See 28 U.S.C. § 352(b)(1)(A)(ii) (listing reasons the chief judge may decide to dismiss the complaint, including claims directly related to the merits of a decision); In re Complaint of Judicial Misconduct, 838 F.3d 1030 (9th Cir. Jud. Council 2016) (dismissing allegations that a district judge made various improper rulings as merits-related); Judicial-Conduct Rule 11(c)(1)(B).

Complainant further alleges that the district judge wanted to usurp power he did not possess. Complainant does not provide any objectively verifiable in support of this allegation, which is dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Jud. Misconduct, 900 F.3d 1163 (9th Cir. 2018) (dismissing allegations that subject judges engaged in racketeering, bribery, conspiracy, kidnapping, and other criminal acts because complainant provided no objectively verifiable evidence in support of those allegations); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.