

JUL 20 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT****IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 18-90074 and 18-90075

ORDER**THOMAS**, Chief Judge:

Complainant, a pro se litigant, has filed a complaint of judicial misconduct against a district judge and a magistrate judge of this circuit. 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.

To the extent complainant alleges that the judges improperly denied a hearing, improperly dismissed the underlying action, or made other improper rulings, 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).

Complainant appears to allege that the judges purposefully did not mail him notice that a report and recommendation was filed, in order to "cause [complainant] to default on deadlines." A review of the record shows that complainant filed untimely objections to the report and recommendation (asserting that he never received a copy), that the court filed the objections nunc pro tunc, and that the court in fact considered complainant's objections before dismissing the action. In any event, judges are not personally responsible for mailing notice to litigants, and complainant fails to show or even allege any instances of

misconduct. Accordingly, this allegation is dismissed as unfounded and for failure to allege any conduct prejudicial to the effective and expeditious administration of the business of the courts. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 552 F.3d 1146, 1147 (9th Cir. Jud. Council 2009); In re Complaint of Judicial Misconduct, 647 F.3d 1181, 1182 (9th Cir. Jud. Council 2011) (“Because complainant doesn’t allege conduct ‘prejudicial to the effective and expeditious administration of the business of the courts,’ her charges must be dismissed”); Judicial-Conduct Rules 11(c)(1)(A), (D).

Finally, complainant alleges that a “reasonable person of sound mind” would conclude “that acts of impropriety did occur.” Complainant offers no objectively verifiable proof in support of these vague and conclusory allegations, which 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. 2009) (“claimant’s vague insinuations do not provide the kind of objectively verifiable proof that we require”); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.