

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**

No. 18-90086

ORDER

THOMAS, Chief Judge:

Complainant, a pro se prisoner, has filed a complaint of judicial misconduct against 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 judge 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 alleges that in the underlying habeas proceedings, the subject judge granted an inadequate extension of time to file objections, required complainant to file a premature request for a certificate of appealability, and made other improper rulings. These allegations relate directly to the merits of the judge's 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 also alleges that the judge is biased against prisoners convicted of certain offenses, as evidenced by the fact that she requires only these particular prisoners to file requests for certificates of appealability. Adverse rulings are not proof of bias or other misconduct. See In re Complaint of Judicial Misconduct, 715 F.3d 747, 749 (9th Cir. Jud. Council 2013) ("As we have frequently held, adverse rulings, standing alone, are not proof of misconduct"); In re Complaint of Judicial Misconduct, 650 F.3d 1370, 1371 (9th Cir. Jud. Council 2011) ("adverse rulings do not prove bias or conspiracy"). Moreover, complainant offers no

objectively verifiable proof to support this charge, (e.g., proof that the judge follows a different practice for other categories of habeas petitioners), and makes only vague and conclusory allegations that this practice “appears to be confined mainly to petitioners with inflammatory cases,” and that “there are several other prisoners I have met who have had this same thing happen.” This charge must be 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).

Finally, complainant alleges that he delivered his objections to prison staff for mailing approximately four months ago, and has not yet heard from the district court whether his objections have been filed. To the extent complainant alleges improper delay, he offers no evidence that the alleged delay is based on improper motive, or that the subject 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).

DISMISSED.