

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. 18-90098

ORDER

THOMAS, Chief Judge:

Complainant, a pro se litigant, has filed a complaint of judicial misconduct against 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 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 has been deemed a vexatious litigant. Accordingly, the subject judge has stricken or rejected for filing several submissions in the underlying civil case. Complainant alleges that the judge treated him in an "egregious and hostile" manner by failing to file a recent Notice of Appeal. A review of the docket demonstrates that complainant already appealed the dismissal of his civil case, and that the appellate court affirmed the judge's ruling almost a year ago. Despite orders that the appeal was closed and that no further submissions would be entertained, complainant continued to submit motions and other submissions, which has resulted in monetary sanctions against complainant.

About ten months after the mandate issued in his appeal, complainant submitted a request for leave by a vexatious litigant to file a motion to transfer venue in his closed underlying case. The subject judge struck that document, noting that the underlying case had been dismissed and that the appellate court had affirmed. Complainant then lodged a Notice of Appeal challenging that order, which the district court rejected for filing. Soon after, complainant filed a Petition

for Writ of Mandamus requesting that the appellate court compel the subject judge to file the Notice of Appeal. Noting that no further filings would be entertained in the closed appeal, the appellate court advised that it would not entertain the mandamus petition.

Complainant has provided no evidence that the district judge treated him in an egregious manner, retaliated against him, or committed any misconduct by rejecting complainant's Notice of Appeal for filing. As such, complainant's current allegations are dismissed as unfounded and merits-related. See 28 U.S.C. § 352(b)(1)(A)(ii) and (iii).

Complainant recently filed a complaint of judicial misconduct against another district judge, No. 18-90068, which was dismissed as merits-related on July 20, 2018. In that order, complainant was cautioned that a "complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints." The current complaint was signed and submitted just days after that order was mailed, so it is assumed that complainant did not receive this cautionary notice.

Complainant is advised that any future complaints making merits-related or unfounded allegations will be summarily dismissed, and an order to show cause as to why complainant should not be restricted from filing further misconduct

complaints will issue.

DISMISSED.