

DEC 10 2018

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

Nos. 18-90142 and 18-90143

**ORDER****THOMAS**, Chief Judge:

Complainant, a pro se litigant, has filed complaints of judicial misconduct against two magistrate judges. 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.

Complainant alleges that orders in his underlying civil cases are infirm because the judges failed to issue the orders “under the seal of the court.” Complainant has raised this claim in three previous misconduct complaints, which were dismissed as merits related, and complainant was advised that a judge need not affix the seal of the court to an order. See In re Complaint of Judicial Misconduct, No. 18-90010 (9th Cir. Jud. Council Feb. 7, 2018); In re Complaint of Judicial Misconduct, Nos. 18-90018+ (9th Cir. Jud. Council Mar. 21, 2018). Therefore, the prior orders make further action on these charges unnecessary. See Judicial-Conduct Rule 11(c)(1)(C); In re Complaint of Judicial Misconduct, 563 F.3d 853, 854 (9th Cir. Jud. Council 2009).

Likewise, complainant reiterates allegations that one of the judges made improper rulings, such as striking a motion and allowing perjured testimony. The prior order in In re Complaint of Judicial Misconduct, Nos. 18-90018+, makes further action on this charge unnecessary. See Judicial-Conduct Rule 11(c)(1)(C). To the extent that complainant disagreed with further rulings by either judge, the

charges relate directly to the merits of the judges' rulings and must therefore 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 further alleges that one of the judges delayed ruling on a “fee waiver” motion. Delay is not cognizable misconduct “unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” Judicial-Conduct Rule 3(h)(3)(B); see In re Complaint of Judicial Misconduct, 567 F.3d 429, 431 (9th Cir. Jud. Council 2009). A review of the docket demonstrates that the motion was resolved, and the matter is closed. Further, complainant has not provided any objective evidence that the alleged delay is habitual or improperly motivated. Because there is no evidence of misconduct, this charge must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

In a previous 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.” See In re Complaint of Judicial Misconduct, Nos. 18-90018+. Accordingly, complainant is ordered to show cause why he should not be sanctioned by a restrictive filing

order. See Judicial-Conduct Rule 10(a); In re Complaint of Judicial Misconduct, 552 F.3d 1146, 1148 (9th Cir. Jud. Council 2009). Complainant has thirty-five days from the filing of this order to file a response, which will be transmitted to the Judicial Council for its consideration.

**DISMISSED and COMPLAINANT ORDERED TO SHOW CAUSE.**