

FILED

JAN 22 2019

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 18-90150 and 18-90151

ORDER

THOMAS, Chief Judge:

Complainant, a pro se litigant, 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.

Complainant alleges that the magistrate judge and her staff improperly reviewed objections to a report and recommendation, and improperly drafted a proposed order for the district judge who would rule on the report and recommendation. Complainant further alleges that the district judge abdicated his responsibility to review the report and recommendation, and allowed the magistrate judge or her staff to draft his order and to affix the district judge's electronic signature to the order. Complainant bases these allegations on his review of the document properties of the PDF documents uploaded to Pacer. For instance, the "author" listed is the name of the magistrate judge's deputy clerk.

Court staff is responsible for uploading documents to Pacer, and thus would be described as the "author" in the document properties. Court staff are also often responsible, at the judge's direction, to prepare proposed orders and to affix electronic signatures to approved orders. See In re Complaint of Judicial Misconduct, No. 11-90097 (9th Cir. Jud. Council July 29, 2011) ("Judges aren't

required to sign their orders Failing to do so, therefore, isn't 'prejudicial to the effective and expeditious administration of the business of the courts'').

Complainant's other allegations, including that the magistrate judge and the magistrate judge's staff improperly influenced the district judge's decision or that the district judge improperly delegated his duties, are pure speculation. These vague and conclusory allegations are dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 583 F.3d 598 (9th Cir. Jud. Council 2009); In re Complaint of Judicial Misconduct, 569 F.3d 1093 (9th Cir. Jud. Council 2009) ("claimant's vague insinuations do not provide the kind of objectively verifiable proof that we require"); Judicial-Conduct Rule 11(c)(1)(D). There is no evidence that the magistrate judge issued any dispositive rulings in the case. See 28 U.S.C. § 636(b)(1). To the extent that complainant disagreed with either of the judges' orders, 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).

DISMISSED.