

JAN 22 2019

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

No. 18-90152

ORDER**THOMAS**, Chief Judge:

Complainant, a prisoner, has filed a complaint of judicial misconduct against a district 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 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, during an evidentiary hearing regarding revocation of supervised release, the judge exhibited an inability to remember statements made by the attorneys and a witness, and needed to be reminded repeatedly of statements and dates. Pursuant to a limited inquiry under Judicial-Conduct Rule 11(b), the transcript of the subject hearing has been reviewed. The transcript does demonstrate the judge needed clarification as to certain dates and testimony, but there were multiple dates on which complainant failed to enter a residential substance abuse program, which appears to have caused confusion. The transcript does not demonstrate that the judge suffers from cognitive impairment. Further, complainant raised similar allegations on appeal, and an appellate panel recently affirmed the judge's revocation of supervised release, found no abuse of discretion, and rejected complainant's request to remand the case. Therefore, the allegations are dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.