

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. 18-90159, 18-90160
and 18-90161

ORDER

THOMAS, Chief Judge:

Complainants, pro se litigants, have filed a complaint of judicial misconduct against three circuit 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 complainants 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.

Complainants allege that the judges used the wrong standard of review when they affirmed a district court's order denying a motion for a preliminary injunction in a civil rights action against a state court judge and other parties involved in probate proceedings. Complainants also claim that the panel improperly handled motions, and issued a mandate 19 days prior to the date that it should have issued. These allegations relate directly to the merits of the judges' 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).

The subject judges also denied complainants' petition for panel rehearing, and in that order alerted complainants that the "full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc." Complainants allege that the judges failed to follow proper procedures in the en banc process, because the docket should have indicated the date on which the petition was circulated. A review of the court's

non-public docket demonstrates that the petition was in fact circulated on a certain date to the full court. To the extent complainants raise allegations against court staff, such allegations are dismissed because this misconduct complaint procedure applies only to federal judges. See In re Complaint of Judicial Misconduct, 632 F.3d 1287, 1288 (9th Cir. Jud. Council 2011); Judicial-Conduct Rule 4.

DISMISSED.