

FILED

MAY 2 2019

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 19-90046

ORDER

THOMAS, Chief Judge:

Complainant, a pro se prisoner, 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 alleges that the judge improperly ruled that complainant's habeas claims were unexhausted, disregarded evidence of exhaustion, and made various other improper rulings in the underlying case. These allegations relate directly to the merits of the judge's 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).

Complainant also alleges that the judge has treated him in an egregious and hostile manner. However, adverse rulings are not evidence of hostile treatment or other misconduct, and complaint offers no other proof in support of this allegation, which must be 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).

Finally, complainant alleges that the judge has delayed the underlying proceedings. A review of the record shows that the case has proceeded in due course. Moreover, complainant fails to show or allege that any delay is improperly motivated, or that the judge has habitually delayed ruling in a significant number of unrelated cases. Accordingly, this charge must be dismissed. See In re Complaint of Judicial Misconduct, 584 F.3d 1230, 1231 (9th Cir. Jud. Council 2009) (“delay is not 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).

Complainant has now filed a total of four misconduct complaints raising allegations that have been dismissed as merits-related or unfounded. Complainant is 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.” Judicial-Conduct Rule 10(a); see also In re Complaint of Judicial Misconduct, 552 F.3d 1146, 1148 (9th Cir. Jud. Council 2009).

DISMISSED.