

FILED

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 19-90058 and 19-90059

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 judges improperly granted the opposing party's motion to dismiss and made various other incorrect rulings in the underlying civil case. 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).

Complainant also alleges that the judges are biased and have conspired to "rid their dockets" of pro se litigants. Specifically, complainant alleges that the judges apply the rule of *Schneider v. Cal. Dep't of Corrections*, 151 F.3d 1194, 1197 n.1 (9th Cir. 1998) ("in determining the propriety of a Rule 12(b)(6) dismissal, a court may not look beyond the complaint to a plaintiff's moving papers") only to pro se litigants. In support of this allegation, complainant points to a prior unrelated case in which the district judge considered an opposition filed by a counseled plaintiff. However, the cited case is inapposite, as it involved a

motion to dismiss for lack of jurisdiction under Fed. R. Civ. Proc. 12(b)(2).

Moreover, even if the cited case did involve a Rule 12(b)(6) motion and an alleged misapplication of *Schneider*, this would not be sufficient evidence of bias to “raise an inference that misconduct has occurred.” 28 U.S.C. § 352(b)(1)(A)(iii); see In re Complaint of Judicial Misconduct, 650 F.3d 1370, 1371 (9th Cir. Jud. Council 2011) (“adverse rulings do not prove bias”). Accordingly, this allegation 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).

DISMISSED.