

FILED

SEP 23 2019

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 19-90077, 19-90101
and 19-90102

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 declared him a vexatious litigant and made various other incorrect rulings in the underlying 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 underlying case was improperly reassigned to the district judge (on the basis that it was identical to a previously-filed case), and that the magistrate judge was improperly assigned to the case.

However,

a litigant has no right to any particular procedure for the selection of the judge, so long as the judge is chosen in a manner free from bias or the desire to influence the outcome of the proceedings The mere fact that the same judge presided over multiple cases filed by complainant is not proof of misconduct.

In re Complaint of Judicial Misconduct, 650 F.3d 1370, 1371 (9th Cir. Jud. Council 2011) (internal quotes and citations omitted). Because complainant offers no evidence of misconduct, this charge must be dismissed. 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); Judicial-Conduct Rule 11(c)(1)(D).

Next, complainant alleges that the magistrate judge improperly exercised consent jurisdiction. This allegation is belied by the record, which shows that all dispositive orders were entered by the district judge assigned to the case. Accordingly, this allegation is dismissed as unfounded and conclusively refuted by objective evidence. 28 U.S.C. § 352(b)(1)(A)(iii), (B); Judicial-Conduct Rule 11(c)(1)(D); In re Complaint of Judicial Misconduct, 552 F.3d 1146, 1147 (9th Cir. Jud. Council 2009).

Complainant further alleges that the magistrate judge had an improper ex parte communication with an attorney, during which the judge suggested that complainant should be declared a vexatious litigant. Complainant offers no evidence in support of this claim and fails to specify the date on which this supposed ex parte communication occurred. 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).

To the extent complainant raises allegations against attorneys or state court judges, 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 1(b).

Complainant’s request that his underlying civil case be transferred to another district is denied, as this type of relief is not available in these misconduct proceedings. See 28 U.S.C. § 354(a)(2); Judicial-Conduct Rule 11(a).

DISMISSED.