

**FILED**

JUL 25 2019

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

**JUDICIAL COUNCIL  
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF  
JUDICIAL MISCONDUCT**

No. 19-90086

**ORDER**

**THOMAS**, Chief Judge:

Complainant, a pro se prisoner, has filed a complaint of judicial misconduct against 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 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 ordered him to show cause as to why his underlying civil complaint should not be dismissed for lack of service, and made various other incorrect 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 "lied" that the court had not received complainant's proof of service so that the judge could dismiss the action. A review of the docket reveals that after the judge issued the order to show cause, the opposing party waived service, a briefing schedule was set, and the case remains pending. In any event, complainant offers no proof that the judge lied, and this allegation is dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); 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”); In re Complaint of Judicial Misconduct, 552 F.3d 1146, 1147 (9th Cir. 2009); Judicial-Conduct Rule 11(c)(1)(D).

Next, complainant alleges that the judge is biased. However, adverse rulings are not proof of bias, and complainant provides no objectively verifiable evidence to support these allegations, which are 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); Judicial-Conduct Rule 11(c)(1)(D).

Finally, complainant appears to allege that the judge was improperly assigned both to his civil complaint and his habeas petition. 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).

Complainant's request that the subject judge be disqualified from his underlying civil cases is denied, as this type of relief is not available in these judicial misconduct proceedings. See 28 U.S.C. § 354(a)(2); Judicial-Conduct Rule 11(a).

**DISMISSED.**