

SEP 23 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT****IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 19-90108

ORDER**THOMAS**, Chief Judge:

Complainant, a pro se litigant, 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 made improper rulings, including failing to recuse herself. Because these allegations relate directly to the merits of the judge's rulings, and because complainant does not show that the judge failed to recuse for any improper purpose, they 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); In re Complaint of Judicial Misconduct, 647 F.3d 1181 (9th Cir. Jud. Council 2011) (Allegations that a judge erred in failing to recuse are generally dismissed as merits-related A failure to recuse may constitute misconduct only if the judge failed to recuse for an improper purpose[]); Judicial-Conduct Rule 11(c)(1)(B).

Complainant also alleges that the judge, acting as an early neutral evaluator, improperly provided "legal advice" by advising defense counsel to file an ex parte motion to stop complainant from blocking counsel's email communications. Later, as the assigned magistrate judge to the case, the judge granted defendant's ex parte application and ordered complainant to unblock defendant's emails to complainant. Advising the parties that an ex parte application will be entertained to

resolve a communications dispute is not evidence of bias or other misconduct. Because complainant offers no other evidence to support this allegation, it must be dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 715 F.3d 747, 749 (9th Cir. Jud. Council 2013) (“adverse rulings, standing alone, are not proof of misconduct”); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.