

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**

No. 19-90126

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 during jury deliberations in his criminal trial, the judge improperly gave an ex parte oral instruction to the jury. Complainant raised this same allegation in a previous misconduct complaint. See In re Complaint of Judicial Misconduct, No. 18-90087 (9th Cir. Jud. Council Oct. 19, 2018). A limited inquiry was conducted in the previous proceeding. As stated in the previous order,

Based on the judge's recollection of the trial, the courtroom deputy's recollection of the trial, the courtroom deputy's description of standard practices in juror deliberations, and the underlying record, it is highly unlikely that any ex parte communication in fact occurred.

Id. at 3.

In support of his current misconduct complaint, complainant has submitted an affidavit by a private investigator who interviewed the alleged "hold-out" juror in complainant's criminal trial. However, this affidavit is largely duplicative of the juror's own declaration (submitted in support of the previous misconduct complaint), and provides no additional proof that an ex parte communication or

other misconduct in fact occurred. Accordingly, the previous order dismissing these allegations makes further action unnecessary. See Judicial-Conduct Rule 11(e).

DISMISSED.