

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. 19-90160, 19-90161,
19-90162, 19-90163 and
19-90164

ORDER

THOMAS, Chief Judge:

Complainants, pro se litigants, have filed a complaint of judicial misconduct against a district court judge, a magistrate judge, and three circuit judges. 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.

Complainants allege that the magistrate judge, with the knowledge of the district court judge, tampered with the district court record by removing the First Amended Complaint they had submitted. The record shows that the magistrate judge denied complainants' motion for leave to file an amended complaint while their interlocutory appeal of an earlier ruling was pending. Complainants did not timely renew their motion for leave to amend their complaint. The amended complaint was never removed from the record because it was never made part of the record. To the extent that complainants allege that the decision not to allow amendment of the complaint was in error, the allegation relates 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).

Complainants also allege that the circuit judges did not properly respond to their petition for rehearing and rehearing en banc and to their motion to recall the mandate. Complainants' concerns about the en banc process were raised in an earlier judicial misconduct complaint, and my previous dismissal of these allegations makes further action unnecessary. Complainants identify no misconduct in the court's refusal to entertain a motion to recall the mandate filed 10 months after the order denying their petition for rehearing specified that the case was closed and no further filings would be accepted.

Complainants raise several other questions about the rules and procedures that govern the processing of complaints and appeals in the district and circuit courts. To the extent that these are allegations against court staff, 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 4.

DISMISSED.