

FILED

MAY 4 2021

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 20-90142, 20-90143,
20-90144, 20-90145, 20-90146
and 20-90147

ORDER

THOMAS, Chief Judge:

Complainant, a pro se prisoner, has filed a complaint of judicial misconduct against two magistrate judges 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[s] 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 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.

This misconduct complaint arises from complainant's two civil rights cases related to his treatment in a state prison. Both cases were dismissed, and complainant appealed one of those dismissals to the Ninth Circuit Court of Appeals.

Although the complaint is difficult to read, complainant appears to allege that the magistrate judges improperly dismissed his cases and failed to provide him with trials or hearings. A review of the record reveals that one case was dismissed for failing to state a claim and the other was dismissed for failing to exhaust administrative remedies. Additionally, these charges directly relate to the merits of the judges' rulings and must therefore be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B); In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

Next, complainant alleges that the magistrate judges failed to appoint counsel for complainant. A review of the record shows that complainant never filed a motion for appointment of counsel. Furthermore, this allegation is related to the

merits of the case and must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B); In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

Complainant also alleges that the magistrate judges discriminated against him, but fails to provide any information about this alleged discrimination. Adverse rulings alone do not constitute proof of bias. See In re Complaint of Judicial Misconduct, 687 F.3d 1188 (9th Cir. Jud. Council 2012). This allegation must therefore be dismissed because there is no evidence that misconduct occurred. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 583 F.3d 598 (9th Cir. 2009).

Finally, complainant alleges that the three circuit judges improperly dismissed his appeal. He alleges that they violated his constitutional rights because they knowingly ignored “filed facts” and dismissed his appeal even though there was “evidence of violations.” This allegation is related to the merits of the case and must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B); In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

DISMISSED.