

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. 21-90035 and 21-90036

ORDER

MURGUIA, Chief Judge:

Complainant, a pro se litigant, has filed a complaint of judicial misconduct against a district judge and 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 judges 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.

This misconduct complaint arises out of complainant's numerous cases related to his belief that various federal agencies and employees have violated his constitutional rights. Complainant argues that the magistrate judge assigned to one of these cases committed fraud upon the courts because she is biased and ignored "the laws and canons." In support of that allegation, complainant argues that the magistrate judge improperly dismissed his complaint. A review of the docket reveals that the judge found that complainant failed to state a claim in his civil complaint and provided complainant with an opportunity to cure the complaint's deficiencies. The complainant failed to cure those deficiencies. Complainant provided no other objectively verifiable evidence in support of this allegation that the judge is biased and ignored "the laws and canons." Accordingly, this charge must be dismissed because the allegation is refuted by the record, and complainant has not offered any evidence of misconduct. See 28 U.S.C. § 352(b)(1)(A)(iii) (listing reasons the chief judge may decide to dismiss the complaint, including

claims that lack sufficient evidence to raise an inference that misconduct occurred or contain allegations which are incapable of being established through investigation); In re Complaint of Judicial Misconduct, 900 F.3d 1163 (9th Cir. Jud. Council 2018) (dismissing as unfounded allegations that subject judges engaged in criminal acts because complainant failed to provide objectively verifiable evidence in support of these allegations). Furthermore, this allegation is related to the merits of the case and must also be dismissed on that ground. See 28 U.S.C. § 352(b)(1)(A)(ii) (listing reasons the chief judge may decide to dismiss the complaint, including claims directly related to the merits of a decision).

Next, complainant alleges that the magistrate judge has an unidentified disability because her documents are difficult to understand. Because complainant provides no other information or objectively verifiable evidence in support of this allegation, complainant's allegation is insufficient to "raise an inference that . . . a disability exists." Judicial-Conduct Rule 11(c)(1)(D); see also 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant also alleges that the district judge assigned to the case failed to independently analyze his complaint. In support of this allegation, complainant points to the district judge adopting the magistrate judge's recommendation to dismiss the complaint. A review of the docket reveals that the district judge

explained his reasoning in his dismissal order. Additionally, district judges regularly rely on the reports and recommendations of magistrate judges. See 28 U.S.C. § 636(b)(1)(B) (the court may designate magistrate judges to submit to a judge of the court proposed findings of fact and recommendations for the disposition of the case). Complainant has presented no objectively verifiable evidence of misconduct in this matter, and so, this allegation must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial–Conduct Rule 11(c)(1)(D).

Finally, complainant alleges that both judges mistakenly avoided screening his case. This allegation is refuted by the record. The magistrate judge screened his complaint, and the district judge later explained why he was adopting the magistrate judge’s recommendation to dismiss the complaint. This allegation is therefore “conclusively refuted by objective evidence” and must be dismissed. 28 U.S.C. § 352(b)(1)(B).

DISMISSED.