

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. 21-90037 and 21-90038

ORDER

MURGUIA, Chief Judge:

Complainant, a pro se prisoner, 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.

Complainant alleges that he was denied his constitutional rights during trial and suffered prejudice while arguing his case in court. He also alleges that he was unaware that there were slurs being used to describe his case. However, complainant provides no further information about these allegations. Because complainant does not provide any objectively verifiable evidence in support of these allegations, these allegations must be dismissed. 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).

Complainant next alleges that the court appointed attorney was related to the prosecutor and the judge. Complainant again provides no further information about this allegation. Thus, it is impossible to determine the relationship of people

whose identities remain unknown. Accordingly, this charge must be dismissed.

See id.

Complainant also alleges that he was denied due process because he was unlawfully kept from discovery and legal aid, prevented from using the computers and law library, and denied access to the courts. He states that this was due to COVID-19. To the extent complainants raise allegations against prison or court staff, such allegations are dismissed because this misconduct complaint procedure applies only to federal judges. See Judicial-Conduct Rule 1; In re Complaint of Judicial Misconduct, 567 F.3d 429, 431 (9th Cir. Jud. Council 2009) (dismissing allegations against court staff, attorney, and prison officials because the misconduct complaint procedure applies only to federal judges).

Finally, complainant argues that the court ignored his motion for enlargement of time. He requests that his motion be granted through his misconduct complaint. This is not a form of relief available under the misconduct complaint process. See Judicial-Conduct Rule 11(a). Furthermore, a review of the record reveals that the magistrate judge granted all five of the motions for extension of time that complainant submitted. Accordingly, this charge must be dismissed as it is refuted by the record. See 28 U.S.C. § 352(b)(1)(B) (listing reasons the chief judge may decide to dismiss the complaint, including claims that

are conclusively refuted by objective evidence); In re Complaint of Judicial Misconduct, 583 F.3d 598 (9th Cir. Jud. Council 2009) (dismissing allegations after a review of the underlying record refuted complainant's allegations that the judge treated complainant with hostility).

I note that while the complainant names a district judge and a magistrate judge in his misconduct complaint, he does not bring any specific allegations against the district judge.

DISMISSED.