

FILED

SEPT 29 2022

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 21-90039

ORDER

MURGUIA, Chief Judge:

Complainant, a pro se prisoner, has filed a complaint of judicial misconduct against 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 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.

This misconduct complaint arises out of complainant's attempts to seek declaratory relief under 28 U.S.C. § 2201 by having a state criminal statute declared unconstitutional. In his misconduct complaint, complainant alleges that the judge steered him away from filing a Section 2201 motion and instead "pushed" him to file a petition for a writ of habeas corpus. Once complainant filed the petition, the judge dismissed the petition. A review of the record shows that the judge explained why complainant needed to follow the procedures for a petition for a writ of habeas corpus rather than continuing to pursue a motion for declaratory relief. Regardless, this allegation is related to the merits of the case and must be dismissed on that ground. See 28 U.S.C. § 352(b)(1)(A)(ii); In re Complaint of Jud. Misconduct, 838 F.3d 1030 (9th Cir. Jud. Council 2016) (dismissing allegations that a district judge and magistrate judge made various improper rulings as merits-related); Judicial-Conduct Rule 11(c)(1)(B).

Next, complainant alleges that the judge misconstrued caselaw and the facts to fit his agenda, though he admits that he does not know what that agenda is. In support of this allegation, complainant argues that the judge did not read anything

complainant presented, ignored complainant's arguments, and failed to comprehend what complainant wrote. A review of the record reveals that the judge understood the reasoning behind complainant's arguments, but the judge explained that the relief complainant was seeking was unavailable. Accordingly, this allegation must be dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(ii) (listing reasons the chief judge may decide to dismiss the complaint, including claims that are conclusively refuted by objective evidence).

DISMISSED.