

**FILED**

NOV 26 2021

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

**JUDICIAL COUNCIL  
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF  
JUDICIAL MISCONDUCT**

No. 21-90051

**ORDER**

**THOMAS**, 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[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 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 filed a prisoner civil rights complaint related to involuntary medication in a state prison facility. Complainant alleges that the magistrate judge discriminated against complainant because he has yet to serve defendants with the complaint. An allegation of delay is not misconduct “unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” Judicial–Conduct Rule 3(h)(3)(B). Complainant does not provide any evidence of improper motive or habitual delay in support of his allegation of delay. Because there is no evidence of misconduct, no further action is required. See In re Complaint of Judicial Misconduct, 567 F.3d 429, 431 (9th Cir. Jud. Council 2009). To the extent complainant alleges that the judge discriminated against him because the judge has yet to serve defendants, complainant does not provide evidence in support of that claim, which is dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii).

Additionally, a review of the docket reveals that the magistrate judge explained to complainant that the defendants were not served because the court had

yet to determine whether the complaint was appropriate for service. Any determination related to whether the complaint was appropriate for service or not is merits-related and must also be dismissed on that ground. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B); In re Complaint of Judicial Misconduct, 579 F.3d 1062, 1064 (9th Cir. Jud. Council 2009).

To the extent complainant requests service on defendants and a jury trial to be set, those forms of relief are not available under the misconduct complaint procedure. See 28 U.S.C. § 354(a)(2); Judicial-Conduct Rule 11(a).

**DISMISSED.**