

**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**

Nos. 21-90067 and 21-90068

**ORDER**

**THOMAS**, 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 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.

This misconduct complaint arises out of complainant's civil rights case related to inadequate medical care. Complainant alleges that the district judge and magistrate judge erroneously dismissed his case. In support of his allegation, complainant argues that his case was dismissed for failure to pay filing fees, but complainant was unaware that such fees were due. However, the case was dismissed without prejudice, and the complainant was afforded forty-five days to either pay the fees or file an application to proceed *in forma pauperis*. Complainant did not take either action within the specified time. He alleges that the judges went out of their way to harm complainant. To the extent complainant alleges that the judges erroneously dismissed the case, that charge must be dismissed because it is related to the merits of the case. 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 alleges that the judges intentionally harmed complainant, that charge

must also be dismissed as unfounded because complainant fails to provide objectively verifiable evidence in support of that charge. See 28 U.S.C. § 351(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

**DISMISSED.**