

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. 21-90089, 21-90090, and 21-90091

ORDER

MURGUIA, Chief Judge:

Complainant, a pro se litigant, has filed a complaint of judicial misconduct against three circuit judges. 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 alleges that the circuit judges improperly dismissed the petition for a writ of mandamus filed by him and his wife. Because this allegation relates directly to the merits of the judges' ruling, the complainant has not alleged facts that might amount to judicial misconduct, and therefore the charge must be dismissed. 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); In re Complaint of Judicial 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).

Complainant also alleges that the circuit judges committed fraud by denying the petition for the writ of mandamus. However, adverse rulings on the merits of a case are not proof of fraud. See In re Complaint of Judicial Misconduct, 838 F.3d at 1030 (dismissing allegations that a judge committed "Fraud Upon the Court" by

ruling in favor of defendants because adverse rulings are not proof of bias or fraud).

Finally, complainant alleges that the circuit judges have improperly ignored a petition for rehearing en banc regarding the circuit judges' dismissal order.

However, the record shows that an order was issued explaining that the petition for rehearing en banc would not be considered in light of the circuit judges' previous order stating that no further filings on this case would be considered. Thus, this allegation must be dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(C).

DISMISSED.