

FILED

JAN 31 2023

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 21-90102

ORDER

MURGUIA, Chief Judge:

Complainant, a pro se litigant, 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 alleges that the magistrate judge made numerous improper rulings, including rulings on complainant's numerous recusal motions. Because this allegation relates directly to the merits of the magistrate judge's decisions, 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 magistrate judge has demonstrated racism, prejudice, abuse of power, and corruption by regularly ruling against complainant. But adverse rulings on the merits of a case are not proof of prejudice, and complainant provides no objectively verifiable evidence to support these

allegations, which are dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 715 F.3d 747, 749 (9th Cir. Jud. Council 2013) (“As we have frequently held, adverse rulings, standing alone, are not proof of misconduct”); Judicial-Conduct Rule 11(c)(1)(D).

Finally, complainant asserts that his filing a 28 U.S.C. § 144 motion to disqualify the magistrate judge for alleged personal bias or prejudice should have automatically disqualified the magistrate judge from acting in his case.

Complainant’s assertion is without merit. See United States v. Sibla, 624 F.2d 864, 867 (9th Cir. 1980) (only after the judge to whom a timely motion is directed determines the legal sufficiency of a § 144 affidavit is that judge obligated to reassign decision on the merits to another judge).

DISMISSED.