

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 21-90115
ORDER

MURGUIA, Chief Judge:

Complainant, a pro se prisoner, has filed a complaint of judicial misconduct against a district 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 civil rights case related to his criminal proceedings. In the instant misconduct complaint, complainant alleges that the district judge denied complainant his right to decline a magistrate judge when the district judge allowed a magistrate judge to make rulings in complainant's case without complainant's consent. However, the court may designate magistrate judges to determine nondispositive¹ pretrial matters without requiring the parties' consent. See 28 U.S.C. § 636(b)(1)(A). Because complainant has not provided any objectively verifiable evidence of misconduct in this matter, this allegation must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Jud. Misconduct, 838 F.3d 1030 (9th Cir. Jud. Council 2016) (dismissing allegation that a magistrate judge encouraged complainant to settle the case during a settlement conference because judges may encourage settlement during settlement conferences); Judicial-Conduct Rule 11(c)(1)(D).

¹ The definition of nondispositive refers to motions that do not decide or resolve the case once and for all.

Next, complainant alleges that the docket for his case was altered in order to cover up the fact that a magistrate judge made rulings in his case without his consent. He argues that the docket was altered to make it appear as if a district judge was assigned to the case all along. This allegation is based on the belief that the magistrate judge was not allowed to work on this case without complainant's consent. That belief is inaccurate as discussed above. Accordingly, this charge must be dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial–Conduct Rule 11(c)(1)(A).

DISMISSED.