

FILED

June 22 2023

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 21-90146 and 21-90147

ORDER

MURGUIA, Chief Judge:

Complainant, a pro se prisoner, has filed a complaint of judicial misconduct against two 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 judges 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 habeas corpus petition and his attempts to invalidate a state criminal statute. In his misconduct complaint, complainant alleges the two circuit judges demonstrated a "deep seated antagonism" against complainant for "whatever reasons unknown." In support of his allegation, complainant argues that the two circuit judges improperly denied his request for a certificate for appealability. A review of the underlying record reveals that the two subject judges did not deny complainant's request. In fact, his request was denied by two other circuit judges who were not named in the complaint. Accordingly, this allegation must be dismissed as unfounded since the judges named in the misconduct complaint were not involved in the decision that complainant alleges was improper. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D). Even if the subject judges were involved in that decision, this allegation would be dismissed as merits-related. See 28 U.S.C. § 352(b)(1)(A)(ii); In re Complaint of Jud. 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 next alleges that the subject judges improperly denied his motion for reconsideration en banc. These allegations are related to the merits and must be dismissed on that ground. See 28 U.S.C. § 352(b)(1)(A)(ii); In re Complaint of Jud. 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).

DISMISSED.