

Nov.1 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT****IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 22-90004 and 22-90005

ORDER**MURGUIA**, Chief Judge:

Complainant, a pro se litigant, 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 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.

Complainant alleges that the district judge and magistrate judge “acted in concert” with defense counsel to effectuate “fraud coverup.” In support of this allegation, complainant states that the district judge denied a motion for reconsideration, revoked complainant's e-filing privileges, and cancelled oral argument to conceal the wrongdoing. A review of the docket reveals that the district judge revoked complainant's e-filing privileges because complainant filed documents on the public docket that should have been filed under seal. Moreover, complainant fails to provide any objectively verifiable evidence in support of the fraud allegation, which is dismissed as unfounded. See 28 U.S.C.

§ 352(b)(1)(A)(iii) (listing reasons the chief judge may decide to dismiss the complaint, including claims that are frivolous or lacking sufficient evidence to raise an inference that misconduct has occurred); In re Complaint of Judicial Misconduct, 900 F.3d 1163 (9th Cir. Jud. Council 2018) (dismissing as unfounded

allegations that subject judges engaged in racketeering, conspiracy, and other criminal acts because complainant failed to provide objectively verifiable evidence in support of these allegations); Judicial-Conduct Rule 11(c)(1)(D).

Next, complainant alleges that the district judge's delay in ruling on a motion for leave to supplement a brief violated due process and equal protection. But delay is not misconduct "unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases." Judicial-Conduct Rule 4(b)(2). Complainant provides no evidence of improper motive or delay. Accordingly, this allegation must be dismissed.

Finally, complainant alleges that the district judge and magistrate judge erred in allowing the filing of non-confidential documents under seal and in issuing other rulings. These allegations are related to the merits of the case and must be dismissed on that ground. 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); Judicial-Conduct Rule 11(c)(1)(B).

DISMISSED.