

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. 22-90007, 22-90045,
22-90046, 22-90047, and
22-90048**ORDER****WARDLAW**, Circuit Judge¹:

Complainant, a pro se prisoner, has filed a complaint of judicial misconduct against five 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

¹ This complaint was assigned to Circuit Judge Kim M. Wardlaw pursuant to 28 U.S.C. § 351(c).

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' failure to rule on his application for leave to file a second or successive habeas petition within the thirty-day time limit violates federal law, violates due process, and generally constitutes judicial misconduct. A review of the docket reveals that complainant's application was pending for one-hundred and sixty-five days before a decision was issued. However, the thirty-day time limit in 28 U.S.C. § 2244(b)(3)(D) is not mandatory. Ezell v. United States, 778 F.3d 762, 765 (9th Cir. 2015) (thirty-day time limit is hortatory, not mandatory). Moreover, delay is not cognizable 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 habitual delay. Accordingly, this allegation must be dismissed.

Complainant next alleges that his application was denied in retaliation for filing a writ of mandamus with the United States Supreme Court. Complainant points to the timing of the denial but does not provide any objectively verifiable proof to support his allegation. Because adverse rulings are not proof of misconduct, this allegation is 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) (“adverse rulings, standing alone, are not proof of misconduct”); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.