

Dec.12 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT****IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**Nos. 22-90026, 22-90027,
22-90028, 22-90029, and
22-90126**ORDER****MURGUIA**, Chief Judge:

Complainant, a pro se prisoner, has filed two complaints of judicial misconduct against two district judges and two magistrate judges. Review of these complaints 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 the 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 court judges and magistrate judges were prejudiced and biased because they refused to docket several filings and a magistrate judge failed to send complainant notice of the settlement proceedings. A review of the docket shows that complainant's filings were rejected for different reasons, including for being impermissible letters to the judge, unauthorized filings, and repetitive filings. The docket also reflects that the magistrate judge resent the initial settlement conference order after the complainant informed the court that he had not received any recent communications. Because the complainant offered no evidence that the filing or notice issues were motivated by prejudice or bias, these allegations are dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 687 F.3d 1188 (9th Cir. Jud. Council 2012) ("adverse rulings alone do not constitute proof of bias"); Judicial-Conduct Rule 11(c)(1)(D).

Complainant next alleges that the 10-year delay in the underlying case proceeding to trial is evidence of prejudice. 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 where the underlying case involved multiple claims against several defendants and both parties requested multiple extensions of time. Accordingly, this allegation must be dismissed.

Complainant also alleges that a district court judge should have recused himself because the district court judge “had all intentions of destroying [the] valid complaint, as told by his dismissing [the] case.” Although an allegation that a judge presided in a case intending to favor one party on grounds unrelated to the merits may present a viable claim of judicial misconduct, complainant offers no evidence that the judge was acting with an improper motive. See Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice 146 (2006). These allegations are therefore dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 756 F.3d 1143, 1144 (9th Cir. 2014), aff’d, 768 F.3d 998 (9th Cir. 2014); Judicial-Conduct Rule 11(c)(1)(D).

Finally, complainant challenges the dismissal of his claims and other rulings made by the district court and magistrate judges. These allegations relate directly to the merits of the judges' rulings and must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); 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).

DISMISSED.