

Dec.11 2023

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

Nos. 22-90083 and 22-90084

ORDER**MURGUIA**, Chief Judge:

Complainant, a pro se prisoner, has filed a complaint of judicial misconduct against two district 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 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.

Complainant alleges that one district judge committed misconduct by granting summary judgment against him in one case, and by dismissing some of his claims in a different case. Complainant then alleges that the second district judge committed misconduct by upholding an order issued by a magistrate judge extending a deadline for dispositive motions in a third case.

All these allegations are merits related 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); In re Complaint of Judicial Misconduct, 838 F.3d 1030 (9th Cir. Jud. Council 2016) (dismissing as merits-related allegations that a district judge and magistrate judge made various improper rulings in a civil case); Judicial-Conduct Rule 11(c)(1)(B).

Complainant also alleges that the judges were biased against complainant based on their adverse rulings. Complainant does not provide any objectively verifiable evidence in support of this allegation and adverse rulings are not proof of

bias. Accordingly, this allegation 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 lack sufficient evidence to raise an inference that misconduct occurred or contain allegations which are incapable of being established through investigation); In re Complaint of Judicial Misconduct, 715 F.3d 747, 749 (9th Cir. Jud. Council 2013) (adverse rulings alone are not proof of misconduct); Judicial-Conduct Rule 11(c)(1)(D).

Finally, complainant raises allegations against a retired magistrate judge. Because the Judicial-Conduct Rules apply only to active federal judges, any allegations complainant raises against a retired magistrate judge are not reviewable under the rules and must therefore be dismissed. See Judicial-Conduct Rule 1.

Complainant's request for an oral hearing is not permitted under the Judicial-Conduct Rules.

DISMISSED.