

**FILED**

Apr. 18 2024

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

**JUDICIAL COUNCIL  
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF  
JUDICIAL MISCONDUCT**

Nos. 22-90127 and 22-90128

**ORDER**

**MURGUIA**, Chief Judge:

Complainant, a pro se prisoner, has filed a complaint of judicial misconduct against a district judge and a recently retired 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 magistrate judge's orders exceeded his authority. However, the rules governing misconduct only apply to active judges, so the magistrate judge's recent retirement is an intervening event that renders "action on the complaint no longer necessary." See Judicial-Conduct Rules 1(b), 11(a)(3). Accordingly, any allegations relating to the magistrate judge must be dismissed as moot. See In re Charge of Judicial Misconduct, 91 F.3d 90, 91 (9th Cir. Jud. Council 1996).

Complainant's only allegation regarding the district judge is that he "refuse[d] to listen" to arguments regarding the validity of orders issued by the magistrate judge. Because complainant failed to demonstrate that any misconduct occurred, 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 are frivolous or lacking sufficient evidence to raise an inference that misconduct has occurred); In re Complaint of Judicial

Misconduct, 569 F.3d 1093 (9th Cir. Jud. Council 2009) (“claimant’s vague insinuations do not provide the kind of objectively verifiable proof that we require”); Judicial-Conduct Rule 11(c)(1)(D).

**DISMISSED.**