

FILED

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 23-90030, 23-90031,
23-90032

ORDER

MURGUIA, Chief Judge:

Complainant, a prisoner, has filed a complaint of judicial misconduct against a district judge and two magistrate 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 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.

This case arises from a civil rights action filed by complainant. Complainant alleges that the first magistrate judge and district judge improperly denied his motions without first providing an opportunity for him to be heard. Challenges to the ruling that additional briefing was unnecessary to resolve the motions and the ruling denying those motions must be dismissed as relating to the merits of the judges' decisions. 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 allegations that a district judge and a magistrate judge made various improper rulings in a civil case as relating to the merits); Judicial-Conduct Rule 11(c)(1)(B).

Complainant next alleges that the second magistrate judge demonstrated bias against him and failed to remain impartial during a settlement conference. Settlement conferences provide unique opportunities to candidly assess the

strengths and weaknesses of a case. Given this context, the statements complainant attributes to the second magistrate judge do not amount to misconduct.

Accordingly, these allegations are dismissed. See Judicial-Conduct Rule

11(c)(1)(A) (dismissal is warranted when the conduct alleged “even if true, is not prejudicial to the effective and expeditious administration of the business of the courts”).

DISMISSED.