

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. 24-90073, 24-90074

ORDER

MURGUIA, Chief Judge:

Complainant, a pro se prisoner, has filed a complaint of judicial misconduct against a district judge and a 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 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 judge and the magistrate judge “engaged in prejudicial conduct.” Although the complaint is difficult to understand, it appears that complainant is alleging that the judges failed to resolve his petition in a timely manner and wrongly denied his related motion to expedite. Without a showing of an “improper motive in delaying a particular decision or a habitual delay in a significant number of unrelated cases,” delay alone is not cognizable misconduct. *See* Judicial-Conduct Rule 4(b)(2). A review of the record reflects that the case was resolved in about 15 months, and that at least some of the alleged delay was caused by complainant filing extraneous motions and notices of appeal. Complainant makes no allegation of an improper motive, and none can be found in the record.

Any allegation regarding delay is dismissed as not cognizable and 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).

To the extent complainant challenges the judges’ rulings on his motions to expedite, the allegation is dismissed because it relates directly 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 that claims are 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 judge made various improper rulings in a case); Judicial-Conduct Rule 11(c)(1)(B).

DISMISSED.