

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. 24-90077, 24-90078,
24-90079

ORDER

MURGUIA, Chief Judge:

Complainant, a pro se prisoner, has filed a complaint of judicial misconduct against a magistrate judge and 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 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 first alleges that the magistrate judge lacked jurisdiction over his case and therefore should not have been “involved at all.” The magistrate judge acted within her authority pursuant to 28 U.S. Code § 636 and the Local Rules of the relevant district court. Accordingly, this allegation is dismissed as belied by the record 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 lacking sufficient evidence to raise an inference that misconduct has occurred); Judicial-Conduct Rule 11(c)(1)(D).

Complainant next alleges that the magistrate judge exhibited “intentional and specific bias” against him, because she regularly rules in favor of opposing counsel. However, adverse rulings are not proof of bias. *See In re Complaint of Judicial Misconduct*, 838 F.3d 1030 (9th Cir. Jud. Council 2016). Accordingly, this allegation is dismissed as unfounded and as an impermissible challenge to the merits of the judge's decisions. *See* 28 U.S.C. § 352(b)(1)(A)(ii), (iii) (listing

reasons the chief judge may decide to dismiss the complaint, including that claims are directly related to the merits of a decision, or that claims are lacking sufficient evidence to raise an inference that misconduct has occurred); Judicial-Conduct Rule 11(c)(1)(B), (D).

Complainant next alleges that the magistrate judge restricted his ability to file in retaliation for his prior allegations of misconduct against the magistrate judge. A review of the record demonstrates that the magistrate judge did not completely restrict complainant from filing. Rather, she clarified the two types of responsive filings that would be accepted at a particular point in time. Accordingly, this allegation is dismissed because the conduct complainant describes “is not prejudicial to the effective and expeditious administration of the business of the courts.” *See* Judicial-Conduct Rule 11(c)(1)(A). The allegation is further dismissed as unfounded and as an impermissible challenge to the merits of the judge’s decision. *See* 28 U.S.C. § 352(b)(1)(A)(ii), (iii); Judicial-Conduct Rule 11(c)(1)(B), (D).

Complainant’s final allegation against the magistrate judge is that she suffers from a “mental disability.” Underlying this allegation is complainant’s belief that the magistrate judge has incorrectly ruled against him, which is not evidence of a disability. Accordingly, this allegation is dismissed as unfounded. *See* 28 U.S.C.

§ 352(b)(1)(A)(iii); *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).

Although complainant alleges that the two district judges were “complicit” in and failed to “intervene or correct” the magistrate judge’s alleged misconduct, as previously noted, there was no misconduct committed by the magistrate judge and therefore no wrongdoing by the district judges. The allegations against the district judges are dismissed as unfounded. *See id.*

Finally, complainant alleges wrongdoing by the Clerk of Court. Because the Judicial-Conduct Rules apply only to active federal judges, this allegation must be dismissed. *See* Judicial-Conduct Rule 1.

DISMISSED.