

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**

No. 24-90131

ORDER

MURGUIA, Chief Judge:

Complainant, a pro se prisoner, has filed a complaint of judicial misconduct against a district 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 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 submitted voluminous documents in support of the habeas petition he filed in the district court. These documents were initially placed in storage rather than being scanned and digitally filed on the docket. Complainant alleges that the district judge “willfully concealed” these documents, failed to consider them when denying the habeas petition, and prevented the Ninth Circuit judges from considering them once complainant had appealed the district judge's decision. These allegations are belied by the record, which reflects that the district judge ordered the state to file copies of all documents relevant to the case, which duplicated and supplemented complainant's submission. Further, the district judge extensively referred to the record in his 57-page order dismissing the habeas petition. The district judge also ordered complainant's documents to be scanned, filed, and included in the record on appeal. Because complainant failed to demonstrate that the district judge did not consider complainant's documents, or prevented the appellate judges from considering the documents, these allegations are 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 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 alleges that the district judge erred by placing the documents in storage, the allegation is dismissed because it relates directly to the merits of the judge’s decision. *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); Judicial-Conduct Rule 11(c)(1)(B).

Complainant next alleges that the district judge denied his habeas petition for the purpose of protecting other judges who were involved in complainant’s state conviction. Complainant offers no evidence whatsoever to support this allegation, which is dismissed as both unfounded and as an impermissible challenge to the merits of the judge’s decision. *See In re Complaint of Judicial Misconduct*, 816 F.3d 1266, 1268 (9th Cir. Jud. Council 2016) (finding no appearance of impropriety based on a judge’s professional and personal relationships); Judicial-Conduct Rule 11(c)(1)(B), (D).

DISMISSED.