

JUDICIAL COUNCIL
OF THE NINTH CIRCUIT

FILED

FEB 15 2008

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

IN RE COMPLAINT OF
JUDICIAL MISCONDUCT

No. 07-89089

MEMORANDUM AND ORDER

KOZINSKI, Chief Judge:

A complaint of misconduct has been filed against a magistrate judge of this circuit. Administrative consideration of such complaints is governed by the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability (Misconduct Rules), issued pursuant to the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980. 28 U.S.C. §§ 351–364.

Complainant, a pro se prisoner, raises allegations about a civil rights case and a habeas petition. He alleges that he required appointed counsel because of his mental disability, and that the judge erroneously denied his motions for appointment of counsel in both cases. He further alleges that his family noticed the judge was biased against him, and that bias was shown by the court in not sending him the address of the defendants' attorney and by the judge in denying appointment of counsel.

The allegation that the judge should have appointed counsel relates directly to the merits of the judge's rulings in the two cases. The procedures for judicial misconduct are not a proper venue for challenging a judge's rulings. See In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982). A complaint will be dismissed if it is directly related to the merits of a judge's ruling or decision in the underlying case. 28 U.S.C. § 352(b)(1)(A)(ii); Misconduct Rule 4(c)(1).

As to the allegation that the judge did not send complainant the address of the defendants' attorney in the civil rights case, no attorney made an appearance for defendants because defendants did not file any documents or appear before the case was dismissed. In the habeas proceedings, defendant served complainant with a notice of appearance containing the name and address of the defense attorney. A complaint will be dismissed if, even when considering all of the allegations as true, the charged behavior does not constitute "conduct prejudicial to the effective and expeditious administration of the business of the courts." Misconduct Rule 4(c)(2)(A); see 28 U.S.C. § 351(a).

Complainant failed to include any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) supporting his allegation of bias. An allegation of bias based solely on the merits of a judge's ruling may be

dismissed, Commentary on Misconduct Rule 4, and charges that are wholly unsupported will be dismissed, 28 U.S.C. § 352(b)(1)(A)(iii); Misconduct Rule 4(c)(3).

DISMISSED.