

JUDICIAL COUNCIL
FOR THE NINTH CIRCUIT

FILED

JAN 10 2008

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

In re Charge of)
Judicial Misconduct)
_____)

No. 07-89109
ORDER AND
MEMORANDUM

KOZINSKI, Chief Judge:

A complaint of misconduct has been filed against a district 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, alleges that the judge committed perjury, obstructed justice and conspired to deny him equal protection, all by granting summary judgment against him. Complainant also alleges that the judge (1) obstructed his right to appeal by certifying the appeal was not taken in good faith, (2) caused complainant's matters to be assigned to himself and (3) is racially biased against him. Complainant's allegations that the judge committed perjury,

obstructed justice and conspired to deny him equal protection by granting summary judgment based on incorrect factual findings, and by improperly certifying that the appeal was not taken in good faith, all relate to the merits of the judge's findings and rulings in the case. 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). The procedures for judicial misconduct are not a proper vehicle for challenging a judge's rulings. See In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982). These charges, therefore, are dismissed.

Complainant failed to include any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) supporting his allegation of racism. Conclusory charges that are wholly unsupported, as here, will be dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Misconduct Rule 4(c)(3).

Complainant's allegation that his cases are improperly assigned to the judge lacks factual foundation. The district court's General Order 44 provides that the Clerk shall assign any non-capital civil action filed by a prisoner to the same judge who was assigned any previous actions filed on behalf of that prisoner. A complaint, like this one, will be dismissed when a limited inquiry demonstrates that the allegations in the complaint lack any factual foundation or are

conclusively refuted by objective evidence. 28 U.S.C. § 352(b)(1)(B).

COMPLAINT DISMISSED.