

AUG 20 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 07-89114

ORDER

KOZINSKI, Chief Judge:

A complaint of misconduct has been filed against two district judges of this circuit, one of whom served as a magistrate judge during the relevant period.

Complainant, a pro se prisoner, petitioned the federal district court for a writ of habeas corpus. The district judge adopted the then-magistrate judge’s Report and Recommendation and denied complainant’s amended habeas petition with prejudice. He also denied complainant’s “Motion to Amend Amended Petition.” Soon after judgment was entered, complainant attempted to file another motion to amend, which the district judge rejected.

Nearly five years after judgment, complainant submitted additional motions. The district judge rejected the document captioned “Motion to Have [Judge] Excluded” and “Motion/Petition for Rehearing” because the case was closed, but accepted for filing complainant’s “Motion for Relief from Judgements [sic] on Both the Dismissal with Prejudice . . . and or the Denial of my Motion to Amend

Amended Petition” under Fed. R. Civ. P. 60(b). The judge subsequently denied this motion in a 5-page order.

Complainant alleges that the judges “willfully ignored valid issues [that he] tried to raise in [his] amended petition,” apparently referring to the claims he had raised in state court. This charge relates directly to the merits of the judges’ rulings in the underlying case, so it must be dismissed. Misconduct Rule 4(c)(1); see 28 U.S.C. § 352(b)(1)(A)(ii). The procedures for judicial misconduct are not a proper vehicle for challenging the merits of a judge’s rulings. See In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

Complainant also alleges that the district judge and then-magistrate judge were swayed by local authorities to help cover up obstruction of justice that occurred in complainant’s state court proceedings, but he hasn’t included any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) supporting this allegation. Because there isn’t sufficient evidence to raise an inference that misconduct occurred, this charge must be dismissed. Misconduct Rule 4(c)(3)(C); see 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant further alleges that the district judge intercepted his “Motion to Have [Judge] Excluded” and “Motion/Petition for Rehearing” because it accused the judges of misconduct, but this motion was properly directed to him because he

was the district judge assigned to the matter. Complainant also claims that the district judge lied in the order denying the Rule 60(b) motion for relief from judgment when the judge stated that he had rejected, rather than denied, complainant's motion to amend his amended petition. But the judge was referring to the motion to amend that complainant filed after judgment was entered, which he properly rejected because the case was already closed. Because these charges lack factual foundation, they must be dismissed. Misconduct Rule 4(c)(3)(A); see 28 U.S.C. § 352(b)(1)(B).

DISMISSED.