

DEC 08 2008

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

**JUDICIAL COUNCIL  
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF  
JUDICIAL MISCONDUCT**

No. 08-89021

**ORDER**

**KOZINSKI**, Chief Judge:

A misconduct complaint has been filed against a district judge.

Complainant, a pro se prisoner, filed a second or successive habeas petition in district court. The subject judge was assigned to the matter.

Complainant alleges that after rejecting his petition, the judge restricted him from filing further petitions in district court in order to protect “his long-time friend and former colleague,” the Assistant U.S. Attorney who prosecuted complainant. Complainant also alleges that the judge assisted in the preparation of the government’s responses to complainant’s first habeas petition in 1985, while the judge was himself an Assistant U.S. Attorney. But complainant hasn’t included any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) supporting these allegations. Because there isn’t sufficient evidence to raise an inference that misconduct occurred, these charges must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Misconduct Rule

4(c)(3).

To the extent that complainant otherwise alleges that the judge improperly rejected his petition and restricted him from filing further petitions in district court, these charges relate directly to the merits of the judge's rulings and must therefore be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Misconduct Rule 4(c)(1). A misconduct complaint is 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's allegations against the Assistant U.S. Attorney who prosecuted him must be dismissed because this complaint procedure applies only to federal judges. See Misconduct Rule 1(d).

**DISMISSED.**