

APR 14 2009

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

**JUDICIAL COUNCIL  
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF  
JUDICIAL MISCONDUCT**

Nos. 08-90017, 08-90018,  
08-90109, 08-90110 and 08-90111

**ORDER**

**PREGERSON**, Circuit Judge<sup>1</sup>:

Complainant, a pro se prisoner, has filed two misconduct complaints against the district judge who was assigned to his criminal case, and three complaints against two circuit judges that he contends failed to correct or report the district judge's abuses. Complainant's two supplements have also been considered.

Complainant previously filed four misconduct complaints against the district judge; each of those complaints were dismissed by the former chief circuit judge. The two current complaints against the district judge merely rephrase the allegations raised in prior complaint No. 07-89063. The chief judge's prior order makes further action on these complaints unnecessary. See 28 U.S.C. § 352(b)(2). To the extent that any of the claims raised might be considered new, complainant does not provide sufficient evidence to raise an inference that misconduct occurred,

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<sup>1</sup> This complaint was assigned to Circuit Judge Harry Pregerson pursuant to 28 U.S.C. § 351(c).

and the charges must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant alleges that the first circuit judge improperly defended the district judge by dismissing his previous misconduct complaints. Further, complainant contends that the second circuit judge, who sat on the judicial council that affirmed the former chief judge's disposition of one his previous complaints, also failed to correct the district judge's alleged misconduct. Challenges to the correctness of an order by the chief judge, or a judge acting in that capacity, dismissing a misconduct complaint are properly dismissed as merits-related. See Judicial-Conduct Rule 3(h)(3)(A); Commentary on Judicial-Conduct Rule 3. Complainant's allegations against these circuit judges are merits-related and therefore dismissed.

Complainant's four previous misconduct complaints each have been dismissed because complainant's allegations were conclusory and/or related to the merits of the subject judge's rulings. Any further complaints that present fundamentally the same allegations against these judges may be dismissed summarily as frivolous, and complainant is cautioned that the Judicial Council can restrict "a complainant who files vexatious, repetitive, harassing, or frivolous complaints, or otherwise abuses the complaint procedure" from filing further

complaints. Judicial-Conduct Rule 10(a).

**DISMISSED in part and CONCLUDED in part.**