

FEB 05 2009

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

JUDICIAL COUNCIL
OF THE NINTH CIRCUIT

IN RE COMPLAINT OF
JUDICIAL MISCONDUCT

No. 08-90019

ORDER

KOZINSKI, Chief Judge:

A misconduct complaint has been filed against a district judge. Complainant, a pro se prisoner, filed a habeas petition in district court. The subject judge was assigned to the matter.

Complainant alleges that the judge should have allowed him to amend his petition. Complainant also alleges that the judge should have reviewed the magistrate judge's Report and Recommendation de novo. Both of 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); Judicial-Conduct Rule 11(c)(1)(B). A complaint of judicial misconduct 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 has filed six other misconduct complaints in the past two years, including one against the magistrate judge to whom this habeas matter was

referred. All but one of these prior complaints were dismissed because complainant's allegations were conclusory and/or related to the merits of the subject judges' rulings. Complainant is cautioned that a "complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints." Judicial-Conduct Rule 10(a); see In re Complaint of Judicial Misconduct, 2009 WL 37149 (9th Cir. Jud. Council Jan. 5, 2009).

DISMISSED.