

APR 01 2009

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

JUDICIAL COUNCIL
OF THE NINTH CIRCUIT

IN RE COMPLAINT OF
JUDICIAL MISCONDUCT

Nos. 08-90038, 08-90050,
08-90051, 08-90054 and 08-90135

ORDER

KOZINSKI, Chief Judge:

Five misconduct complaints have been filed against two district judges and three magistrate judges. Complainant, a pro se prisoner, filed a habeas petition and several civil rights actions in district court. The subject judges were assigned to those matters.

Complainant alleges that the judges made various improper substantive and procedural rulings. These claims relate directly to the merits of the judges' rulings and must therefore be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B). 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 also alleges that the judges were biased, conspired with prison officials and retaliated against him. But complainant hasn't provided any objectively verifiable proof (for example, names of witnesses, recorded documents

or transcripts) to support these allegations. Because there is no evidence that misconduct occurred, these charges must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant further alleges that two of the judges improperly ignored several motions. Delay is not cognizable “unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” Judicial-Conduct Rule 3(h)(3)(B). Complainant provides no evidence of improper motive or habitual delay here.

To the extent that complainant raises allegations against court staff and prison officials, the charges must be dismissed because this misconduct complaint procedure applies only to federal judges. See Judicial-Conduct Rule 4.

Complainant has filed at least five previous misconduct complaints, all but one of which have been dismissed because complainant’s allegations were conclusory and/or related to the merits of the subject judges’ rulings. Complainant is therefore ordered to show cause why he should not be sanctioned by an order requiring him to obtain leave before filing any further misconduct complaints. See Judicial-Conduct Rule 10(a); In re Complaint of Judicial Misconduct, 552 F.3d 1146, 1148 (9th Cir. Jud. Council 2009). Complainant has thirty days from the filing of this order to file a response, which will be transmitted to the Judicial

Council for its consideration.

DISMISSED and COMPLAINANT ORDERED TO SHOW CAUSE.