

JUN 03 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT****IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 08-90150

ORDER**KOZINSKI**, Chief Judge:

A misconduct complaint has been filed against a district judge. The subject judge was assigned to complainant's criminal proceedings and related habeas petition.

Complainant alleges that the judge should not have accepted his guilty plea because the indictment was defective and the plea agreement was fraudulent. This charge relates 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 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 judge instructed the court clerk to conceal certain submissions in his habeas case. But complainant hasn't provided any objectively verifiable proof (for example, names of witnesses, recorded documents

or transcripts) to show that the judge instructed the clerk not to file any documents.

Moreover, the docket reveals that at least one of the motions that was allegedly concealed was in fact filed by the district court. Because there is no evidence that misconduct occurred, this charge must be dismissed. See 28 U.S.C.

§ 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

To the extent that complainant raises allegations against court staff and the prosecutors involved in his criminal proceedings, the charges are dismissed because this misconduct complaint procedure applies only to federal judges. See Judicial-Conduct Rule 4.

DISMISSED.