

JUL 10 2009

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 08-90173 and 08-90209

ORDER

KOZINSKI, Chief Judge:

Two misconduct complaints and a supplement have been filed against two district judges. The complainant, a pro se litigant, was a defendant in a civil case assigned to a third judge not subject to this complaint. The case was reassigned to the first subject judge after complainant filed nine recusal motions against the original judge (one of which was denied by the first subject judge). Shortly thereafter, complainant filed a civil suit against the first subject judge, which was assigned to the second subject judge. He now complains of misconduct by both subject judges in both proceedings.

Complainant alleges that the judges made various improper substantive and procedural rulings. For example, he claims that the second judge engaged in “criminal coverup” by ruling that his claim against the first judge was barred by absolute immunity. Because these charges relate directly to the merits of the judges’ rulings, they must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii);

Judicial-Conduct Rule 11(c)(1)(B); In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

Complainant also alleges that the first judge fraudulently destroyed part of a filing to assist his opponent in the case. But complainant hasn't provided any objectively verifiable proof that the judge had anything to do with his filing's missing pages. There is thus no evidence that misconduct occurred. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

To the extent complainant raises allegations against Deputy U.S. Marshals, the charges must be dismissed because this misconduct complaint procedure applies only to federal judges. See Judicial-Conduct Rule 4.

Complainant's requests to vacate the judges' rulings, reinstate his cases, and initiate legislation are not cognizable under the misconduct complaint procedure. See Judicial-Conduct Rule 3(h).

This frivolous complaint against two judges arising from the complainant's problems with a third judge and a lawsuit against one of the judges based on his rulings in complainant's case, amounts to a pattern of litigious harassment. Further misconduct complaints based on the same underlying facts will be summarily dismissed. Complainant is cautioned that the filing of any more complaints may result in the imposition of sanctions, including an order preventing him from filing

further misconduct complaints without prior judicial approval. See, e.g., In re Complaint of Judicial Misconduct, 552 F.3d 1146, 1148 (9th Cir. 2009); Judicial-Conduct Rule 10(a).

DISMISSED.