

JUDICIAL COUNCIL
OF THE NINTH CIRCUIT

JUL 30 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALSIN RE COMPLAINT OF
JUDICIAL MISCONDUCT

Nos. 08-90183 and 08-90184

ORDER

KOZINSKI, Chief Judge:

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

Complainant alleges that one of the subject judges, while serving as a magistrate judge, mischaracterized evidence in a report recommending dismissal of the habeas petition. Complainant made the same allegation in a previous complaint, which was dismissed because it related to the merits of the judge's rulings. See In re Complaint of Judicial Misconduct, No. 07-89048 (9th Cir. Jud. Council 2007). That prior order makes further action on this charge unnecessary. See Judicial-Conduct Rule 11(c)(1)(C); In re Complaint of Judicial Misconduct, 563 F.3d 853, 854 (9th Cir. Jud. Council 2009).

After the subject judge was elevated from magistrate judge to district judge, complainant alleges that he again mischaracterized evidence in an order dismissing the habeas petition. Complainant also alleges that it was a conflict of interest for

the district judge to decide the case. 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 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). Nor does it provide a forum for collateral attack on the basis of issues, such as recusal, that could have been raised during proceedings on the merits. See In re Charge of Judicial Misconduct, 691 F.2d 924, 925 (9th Cir. Jud. Council 1982).

Complainant alleges that the second subject judge, who was originally assigned the case, should have decided his habeas petition instead. This allegation is dismissed because the charged behavior does not constitute "conduct prejudicial to the effective and expeditious administration of the business of the courts." 28 U.S.C. § 351(a); Judicial-Conduct Rule 11(c)(1)(A).

Complainant's various requests for relief relating to the merits of his habeas petition are not cognizable under the misconduct complaint procedure and are therefore dismissed. See Judicial-Conduct Rules 3(h)(3)(A); 11(c)(1)(B).

Further misconduct complaints presenting fundamentally the same allegations against these judges will be dismissed summarily as frivolous.

Complainant is also 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); In re Complaint of Judicial Misconduct, 552 F.3d 1146, 1148 (9th Cir. Jud. Council 2009).

DISMISSED.