

FILED

FEB 18 2009

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 08-90008, 08-90009 and
08-90010

ORDER

KOZINSKI, Chief Judge:

Complaints of misconduct have been filed against a district judge and two magistrate judges. Complainant, a pro se prisoner, filed a habeas petition and a civil rights action in district court. The subject judges were assigned to these matters.

Complainant alleges that the judges made various improper substantive and procedural rulings. These charges must be dismissed because they relate directly to the merits of the judges' decisions in the underlying cases. 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 alleges that the judges assigned to his habeas case conspired to reject his pleadings in order to prevent him from prevailing on his claims.

Complainant also alleges that the judge assigned to his civil rights action intentionally impeded his litigation and thwarted his ability to file objections to the judge's findings and recommendations. Complainant further alleges that the magistrate judges were not impartial. Complainant hasn't included 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 also alleges that the district judge circumvented assignment procedures in order to be assigned to complainant's habeas case. But the docket shows that the judge was randomly assigned to the case after another judge recused himself, and complainant hasn't provided any evidence to the contrary. This charge must also be dismissed for lack of evidence. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant's allegations against the court clerk are dismissed because this misconduct complaint procedure applies only to federal judges. See Judicial-Conduct Rule 4.

DISMISSED.