

FEB 13 2009

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 08-90013, 08-90014
and 08-90015

ORDER

KOZINSKI, Chief Judge:

A misconduct complaint has been filed against a magistrate judge and two district judges. Complainant, a pro se prisoner, filed a civil rights action in district court. The subject judges were assigned to the matter.

Complainant alleges that the magistrate judge made improper evidentiary rulings, which the district judges failed to correct. These charges 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 magistrate judge conspired with the attorney for defendants to deprive him of due process. But complainant hasn't included any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) to support this allegation. 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).

Complainant further alleges that his case was improperly reassigned several times. The docket reveals that the case was reassigned to the first subject district judge when the presiding judge assumed senior status, and then reassigned to the second subject district judge when that judge took office. Complainant has provided no proof that there was any improper motive for the reassignments, so this charge must be dismissed as well. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant has filed three prior misconduct complaints raising similar allegations against the judges assigned to his case, all of which have been dismissed because the allegations were conclusory and/or related to the merits of the subject judges' rulings. Any future complaints presenting fundamentally the same allegations will be dismissed summarily as frivolous. Complainant is further 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); see In re Complaint of Judicial Misconduct, 2009 WL 37149 (9th Cir. Jud. Council Jan. 5, 2009).

DISMISSED.