

MAY 21 2009

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

JUDICIAL COUNCIL
OF THE NINTH CIRCUIT

IN RE COMPLAINT OF
JUDICIAL MISCONDUCT

No. 08-90133

ORDER

KOZINSKI, Chief Judge:

A misconduct complaint has been filed against a district judge.

Complainant, a pro se prisoner, filed a habeas petition in district court. The subject judge was assigned to the matter.

Complainant previously filed a misconduct complaint alleging that the subject judge ignored issues raised in his amended petition, covered up obstruction of justice that occurred in his state court proceedings and lied in an order denying a motion for relief from judgment. I dismissed the complaint, and the Judicial Council affirmed the dismissal. See In re Complaint of Judicial Misconduct, No. 07-89114 (9th Cir. Jud. Council 2008). The current complaint repeats these allegations, and complainant again fails to provide any supporting evidence. My prior order therefore makes further action on these charges unnecessary. See 28 U.S.C. § 352(b)(2).

Complainant also alleges that the judge improperly rejected a subsequent

motion. This charge relates directly to the merits of the judge's decision 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 further alleges that the judge was "addled" and acted to hide his prior misconduct. But complainant hasn't provided any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) to support these allegations. Because there is no evidence that misconduct or disability occurred, these charges must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Further misconduct complaints presenting fundamentally the same allegations may be dismissed summarily as frivolous. Moreover, complainant is 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 also In re Complaint of Judicial Misconduct, 552 F.3d 1146, 1148 (9th Cir. Jud. Council 2009).

DISMISSED.