

JUL 30 2009

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

JUDICIAL COUNCIL
OF THE NINTH CIRCUIT

IN RE COMPLAINT OF
JUDICIAL MISCONDUCT

No. 08-90210

ORDER

KOZINSKI, Chief Judge:

A misconduct complaint has been filed against a district judge.

Complainant, a pro se prisoner, was a defendant in a criminal case over which the subject judge presided.

Complainant alleges that the judge improperly denied his motion to vacate, set aside, or correct his sentence. This charge relates directly to the merits of the judge's ruling 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 judge committed fraud by imposing a greater sentence than allegedly agreed upon between the judge and complainant's counsel. But complainant hasn't provided 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's allegations against his counsel are dismissed because this misconduct complaint procedure applies only to federal judges. See Judicial-Conduct Rule 4.

Complainant's requests to withdraw his plea agreement and that he receive a lesser sentence or a new trial are not cognizable under this misconduct complaint procedure. See Judicial-Conduct Rule 3(h).

DISMISSED.