

APR 13 2017

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 16-90054, 16-90055
and 16-90056

ORDER

KOZINSKI, Circuit Judge¹:

Complainant, a pro se litigant, has filed a misconduct complaint against two circuit judges and a district judge. Complainant alleges that the circuit judges's previous judicial misconduct orders are infirm because the judges failed to affix their signatures. Judges don't normally affix their signature to judicial misconduct orders. Further, an "allegation that calls into question the correctness of an official action of a judge ... is merits related." See Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice 145 (2006). This charge relates directly to the merits of the judges' rulings and is dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B); In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

Complainant also alleges that the district judge illegally intercepted mail that was intended for the chief district judge of the district. Complainant mailed a

¹ This complaint was assigned to Circuit Judge Alex Kozinski pursuant to 28 U.S.C. § 351(c).

motion for review to a different judge than the one who was assigned to his case, apparently hoping for a different outcome, but the assigned judge ruled on the motion. Complainant raised this same allegation in a previous judicial misconduct complaint, and it was dismissed. See In re Complaint of Judicial Misconduct, No. 15-90131 (9th Cir. Jud. Council 2015). The prior order therefore makes further action 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).

To the extent that complainant alleges that the subject circuit judges improperly dismissed his previous misconduct complaints, this charge is also dismissed. Challenges to the correctness of an order by the chief judge, or a judge acting in that capacity, dismissing a misconduct complaint are properly dismissed as merits-related. See Judicial-Conduct Rule 3(h)(3)(A); Commentary on Judicial-Conduct Rule 3.

Complainant has filed three previous misconduct complaints which were dismissed as merits-related and unfounded. Any further complaints that present fundamentally the same allegations may be dismissed summarily as frivolous, and complainant is cautioned that the Judicial Council can restrict and sanction “a complainant who files vexatious, repetitive, harassing, or frivolous complaints, or otherwise abuses the complaint procedure” 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.