

FOR PUBLICATION
JUDICIAL COUNCIL
OF THE NINTH CIRCUIT

IN RE COMPLAINT
OF JUDICIAL MISCONDUCT

No. 08-90172
ORDER

Filed June 24, 2009

ORDER

KOZINSKI, Chief Judge:

A misconduct complaint has been filed against a district judge. Complainant, a pro se state prisoner, filed a civil rights action in district court. The matter was assigned to the subject judge.

Complainant alleges that the judge discriminated against him but does not explain how or on what basis. Discrimination is not always improper or unethical; in some circumstances, it is entirely appropriate. For instance, incarceration of individuals convicted of crimes, like complainant, is a wholly permissible form of discrimination. *See McQueary v. Blodgett*, 924 F.2d 829, 834-35 (9th Cir. 1991). Only unlawful or invidious discrimination might amount to judicial misconduct, and complainant has not alleged discrimination of that kind. This charge must therefore be dismissed for failure to allege conduct prejudicial to the effective and expeditious administration of the business of the courts. *See* Judicial-Conduct Rule 11(c)(1)(A).

To the extent complainant may be understood to allege that the judge colluded with prison officials to deny his right of access to the courts, *cf. Bounds v. Smith*, 430 U.S. 817,

821-22 (1977), claimant's vague insinuations do not provide the kind of objectively verifiable proof that we require. This claim must therefore also be dismissed. *See* 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant also alleges that the judge improperly closed his case. Because a misconduct complaint is not a proper vehicle for challenging the merits of a judge's rulings, *In re Charge of Judicial Misconduct*, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982), this charge must be dismissed. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B).

Complainant's allegations against the state judge and prosecutor in his criminal case must also be dismissed, as this misconduct complaint procedure only applies to federal judges. *See* Judicial-Conduct Rule 4.

DISMISSED.

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