

FILED

APR 28 2008

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 07-89123

MEMORANDUM AND ORDER

KOZINSKI, Chief Judge:

A complaint of misconduct has been filed against a district judge of this circuit. Complainant, a pro se prisoner, petitioned for a writ of habeas corpus.

The subject judge dismissed the petition without prejudice, and ordered complainant to use the court-approved form for filing a habeas petition.

Complainant appealed the dismissal of his petition, but the court of appeals denied a certificate of appealability. Complainant then filed a motion requesting that he not have to use the court-approved form. The judge denied the motion, giving reasons for requiring the form.

Complainant alleges that the judge improperly dismissed his petition because the local rules didn't require the use of the court-approved form. He also alleges that the judge's order didn't state the proper issue presented in the petition. These charges are dismissed because they are directly related to the merits of the judge's rulings in the underlying case. 28 U.S.C. § 352(b)(1)(A)(ii); Rule 4(c)(1)

of the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability (Misconduct Rules). A complaint of judicial misconduct is not a proper vehicle for challenging a judge's rulings. See In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

In his filings, complainant identified himself as appearing "Ex parte" and "Sui Juris," and wrote his name using unconventional punctuation. In contrast, the docket and order captions referred to complainant as appearing pro se, and listed his name without punctuation and in a different order (e.g., if complainant had written his name as "A-B; Doe," the docket and orders used the name "B A Doe"). Also, complainant didn't name a respondent in the petition, and the docket and order captions list the respondent as "unknown."

Complainant alleges that the judge didn't use complainant's correct name, and incorrectly referred to him as appearing pro se instead of ex parte or sui juris. He also alleges that the judge incorrectly named the respondent as "unknown," whereas complainant believes it is obvious that the United States is the respondent. Assuming these charges to be true, they are dismissed because they don't amount to "conduct prejudicial to the effective and expeditious

administration of the business of the courts.” Misconduct Rule 4(c)(2)(A); see 28
U.S.C. § 351(a).

DISMISSED.