

FILED

AUG 18 2008

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 07-89136

ORDER

KOZINSKI, Chief Judge:

A misconduct complaint has been filed against a magistrate judge. Complainant, a pro se litigant, filed multiple motions and requests for default judgment with regard to a complaint he attempted to file. The clerk of the district court did not file the complaint because complainant neither paid filing fees nor submitted a motion to proceed in forma pauperis. As the complaint was never filed, the clerk docketed all of the filings related to it in a closed case that complainant had brought earlier.

Complainant filed a motion for default judgment on the ground that defendants had failed to respond, as well as a motion to sanction the clerk, followed by at least five requests for rulings on those motions. The subject judge denied the motion for default judgment because the complaint was never filed, denied the motion for sanctions as unwarranted and denied as moot the remaining requests for rulings. In subsequent orders, the subject judge denied complainant's

motions for reconsideration and requests for rulings, and directed the clerk to return complainant's filings to him until he submitted a new complaint with either the filing fee or an in forma pauperis application.

Complainant alleges that the clerk's office erred by not entering default judgment in his favor, but the misconduct process applies only to judges.

Misconduct Rule 1(d). To the extent that complainant alleges misconduct by the subject judge, his claim relates directly to the merits of the judge's ruling, and must therefore be dismissed. 28 U.S.C. § 352(b)(1)(A)(ii); Misconduct Rule 4(c)(1). 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).

Complainant also claims that the judge made a "concerted effort to obstruct justice" by treating the complaint as part of the earlier case. A review of the judge's orders contradicts this contention. The judge explained in those orders how the complainant could open a new case. Complainant hasn't included any objectively verifiable proof supporting the allegation that the judge was trying to obstruct his attempts to file a new claim. Because the charge lacks factual

foundation, it is dismissed. 28 U.S.C. § 352(b)(1)(B).

DISMISSED.