

AUG 21 2008

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 07-89137

ORDER

KOZINSKI, Chief Judge:

A complaint of misconduct has been filed against two district judges. Complainant, a prisoner, filed a 42 U.S.C. § 1983 action in district court. The first subject judge presided over the case until it was reassigned to another judge not named in this complaint; it was later reassigned to the second subject judge, who dismissed the case.

Complainant alleges that the first subject judge, in an effort to retaliate against him, manufactured false Findings and Recommendations (“Findings”), which were then filed by a magistrate judge not named in this complaint. He also alleges that he was never given a copy of the Findings to which he could object. Complainant further contends that both subject judges knew the Findings to be false and used them to perpetrate a fraud upon the court. Complainant finally alleges that both subject judges improperly obstructed service of the summons in his case.

Complainant has presented no evidence with regard to his allegations that the first subject judge actually authored the Findings, or that both judges knew that those Findings were false. These charges must be dismissed because complainant hasn't included any verifiable proof and his conclusory allegations aren't sufficient to raise an inference that misconduct occurred. 28 U.S.C. § 352(b)(1)(A)(iii); Misconduct Rule 4(c)(3).

It's unclear from the docket whether anyone from the court's staff sent complainant a copy of the Findings. Complainant, however, has presented no evidence to indicate that either subject judge caused this alleged failure. This charged behavior relates to actions taken by the court staff, and must be dismissed because this complaint procedure applies only to federal judges. Misconduct Rule 1(d).

The docket demonstrates that the Findings at issue were filed by the magistrate judge several months after the first subject judge was no longer presiding over this case. The second subject judge ultimately adopted the Findings and dismissed the case. To the extent that complainant alleges that the second subject judge incorrectly adopted the Findings and thereby obstructed the summons from being issued, these charges relate directly to the merits of the underlying case, and therefore must be dismissed. 28 U.S.C. § 352(b)(1)(A)(ii);

Misconduct Rule 4(c)(1). A misconduct complaint is not the 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 has filed a number of misconduct complaints over the past fifteen years, including at least one related complaint against the first subject judge. That misconduct complaint, as well as several other previous complaints, have been dismissed because complainant's allegations were conclusory and related to the merits of an underlying decision. The Court is also aware of complainant's abusive language in past complaints. Complainant's attention is directed to Misconduct Rule 1(g), which provides that a "complainant who files vexatious, repetitive, harassing, or frivolous complaints, or otherwise abuses the complaint procedure," may be restricted from filing further complaints.

DISMISSED.