

FEB 16 2010

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 08-90233 and 09-90006

ORDER

KOZINSKI, Chief Judge:

Complainant, a pro se prisoner, alleges that the district and magistrate judges assigned to his habeas petition improperly rejected his post-judgment motions.

This charge relates directly to the merits of the judges' rulings and must therefore be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule

11(c)(1)(B). A misconduct complaint is not a proper vehicle for challenging a judge's rulings on the merits. See In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

Complainant also claims that the district judge directed the magistrate judge to reject his filings. Superior judicial officers often give directions to inferior ones and it's not clear why complainant believes this would have been improper in his case. In any event, a review of the docket reveals that the filings were properly rejected because the case was closed. 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 28 U.S.C. § 351(a); Judicial-Conduct Rule 11(c)(1)(A).

Complainant's allegation that the judges were biased against him on account of his race must also be dismissed because complainant hasn't provided any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) to support his allegation. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D); In re Complaint of Judicial Misconduct, 569 F.3d 1093, 1093 (9th Cir. Jud. Council 2009). Complainant does not allege that his tape-recorded conversations with court staff establish racial bias, and adverse rulings alone do not constitute proof of bias.

DISMISSED.