

APR 24 2009

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

JUDICIAL COUNCIL
OF THE NINTH CIRCUIT

IN RE COMPLAINT OF
JUDICIAL MISCONDUCT

Nos. 08-89009, 08-90021,
08-90022, 08-90189, 08-90190,
08-90191, 08-90192, and
08-90193

ORDER

Before: **THOMPSON, THOMAS, GRABER, and MCKEOWN**, Circuit Judges, **A. COLLINS, GONZALEZ, LASNIK, and WHALEY**, Chief District Judges, and **HATTER**, District Judge¹

Pursuant to Article V of the Rules for Judicial-Conduct and Judicial-Disability Proceedings under 28 U.S.C. § 352(c), complainant has filed a petition for review of the order of Circuit Judge Schroeder,² entered on January 16, 2009, dismissing his complaints against four circuit judges and two district judges of this circuit.

Complainant's request that "all Ninth Circuit judges" disqualify themselves from handling his petition for review is denied.

We have carefully reviewed the record and the authorities cited by Circuit

¹ Hon. Johnnie B. Rawlinson did not participate in the consideration of this matter.

² The complaints were assigned to Circuit Judge Mary M. Schroeder pursuant to 28 U.S.C. § 351(c).

Judge Schroeder in her order of dismissal. We conclude there is no basis for overturning the order of dismissal. In his petition for review, complainant contends that Circuit Judge Schroeder should have recused herself from considering his misconduct complaints. A judge's decision to hear a case rather than to recuse is merits-related and the Judicial Council, an administrative body, does not review the correctness of a judge's decisions. See 28 U.S.C. § 352(b)(1)(A)(iii); see also *Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice: Standard 2 for Assessing Compliance with the Act* at pp. 145-46 (2006). Further, complainant cannot support bias allegations by pointing solely to a judge's prior rulings. See 28 U.S.C. § 352(b)(1)(A)(iii). Finally, complainant's request that "all U.S. Supreme Court Justices" disqualify themselves from handling his petition for writ of certiorari is not cognizable in this misconduct proceeding.

For the reasons stated by Circuit Judge Schroeder and based upon the controlling authority cited in support thereof, we affirm.

Further, the January 16, 2009 order required complainant to show cause why he should not be sanctioned for his abuse of the misconduct complaint procedure. Complainant had thirty days in which to file a response but instead filed a petition for review and attempted to file an additional complaint. Neither of those

documents responds sufficiently to the order to show cause.

We have carefully reviewed the record. Since 2003, complainant has filed more than twenty misconduct complaints, all of which have been dismissed because complainant's allegations were conclusory and/or related to the merits of the subject judges' rulings. Pursuant to Rule 10(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, we conclude that complainant's right to file further misconduct complaints should be restricted. We direct the Clerk to enter the following pre-filing review order:

Pre-Filing Review Order

(1) This pre-filing review order shall apply to all misconduct complaints or petitions for review filed by complainant. This order shall not apply to appeals or petitions in which complainant has counsel or where the district court has expressly certified in its order that the appeal or petition is not frivolous.

(2) Any future misconduct complaint or petition for review filed by complainant shall comply with the requirements of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, and shall contain the sentence "THIS COMPLAINT/PETITION IS FILED SUBJECT TO PRE-FILING REVIEW ORDER Nos. 08-89009, 08-90021, 08-90022, 08-90189, 08-90190, 08-90191, 08-90192, and 08-90193 " in capital letters in the caption of the complaint or

petition.

(3) If complainant submits a misconduct complaint or petition for review in compliance with this order, the Clerk shall lodge the complaint or petition and accompanying documents. The Clerk shall not file the complaint or petition until complainant's submission is reviewed and a determination is made as to whether it merits further review and should be filed.

(4) This pre-filing review order shall remain in effect until further order of the Judicial Council. Complainant may, no earlier than March 1, 2011, petition the Judicial Council to lift this pre-filing review order, setting forth the reasons why the order should be lifted.

Complainant's failure to comply with this order shall result in any new misconduct complaints or petitions for review being dismissed or not being filed and other sanctions being levied as the Judicial Council may deem appropriate.