

DEC 04 2008

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

JUDICIAL COUNCIL
OF THE NINTH CIRCUIT

IN RE COMPLAINT OF
JUDICIAL MISCONDUCT

Nos. 08-89037 and 08-90116

ORDER

KOZINSKI, Chief Judge:

Two misconduct complaints have been filed against a district judge. Complainant, a pro se prisoner, was convicted of a federal crime. The subject judge presided over his trial and sentencing.

Complainant alleges that the judge incorrectly concluded that alibi evidence offered by the defense did not exonerate him. This charge relates directly to the merits of the judge's ruling and must therefore be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Misconduct Rule 4(c)(1); Judicial-Conduct Rule 11(c)(1)(B). A misconduct complaint is not a 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 also alleges that the judge intentionally concealed exonerating evidence and conspired with the prosecutor to admit fraudulent evidence against him. But complainant hasn't included any objectively verifiable proof (for

example, names of witnesses, recorded documents or transcripts) supporting these allegations. Because there isn't sufficient evidence to raise an inference that misconduct occurred, the charges must be dismissed. See 28 U.S.C.

§ 352(b)(1)(A)(iii); Misconduct Rule 4(c)(3); Judicial-Conduct Rule 11(c)(1)(D).

Complainant's allegations against the prosecutor must be dismissed because this complaint procedure applies only to federal judges. See Misconduct Rule 1(d); Judicial-Conduct Rule 4.

DISMISSED.