

DEC 12 2008

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 08-89043

ORDER

KOZINSKI, Chief Judge:

A misconduct complaint has been filed against three district judges and a magistrate judge. Complainant, a pro se prisoner, filed a civil rights action in district court.

Complainant alleges that the subject judge to whom the matter was assigned improperly dismissed his claims against the other subject judges based on judicial immunity. 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). 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 dismissal was part of a “cover-up” or conspiracy, and that all the subject judges knew that his arrest warrant was fraudulent and that his indictment was invalid. But complainant hasn’t provided

any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) to support these allegations. Because there isn't sufficient evidence to raise an inference that misconduct occurred, these charges must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Misconduct Rule 4(c)(3). Complainant's allegations regarding the validity of the arrest warrant and indictment also relate directly to the merits of the judges' decisions in his underlying criminal prosecution and must therefore be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Misconduct Rule 4(c)(1); In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

To the extent that complainant raises allegations against prosecutors and defense counsel, the charges must be dismissed because this complaint procedure applies only to federal judges. See Misconduct Rule 1(d).

DISMISSED.