

MAY 27 2009

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 08-90136 and 08-90137

ORDER

KOZINSKI, Chief Judge:

A misconduct complaint and a supplement have been filed against two circuit judges. Complainant, a pro se prisoner, appealed the dismissal of his habeas petition. Complainant's request for a certificate of appealability was denied, and the subject judges denied complainant's subsequent "petition for rehearing."

Complainant alleges that the judges incorrectly construed his petition for rehearing as a motion for reconsideration, and thus applied the wrong standard of review. Complainant also alleges that the judges improperly ordered that no further filings would be accepted in the appeal. These charges relate 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 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 alleges that the judges were biased against him because he was a prisoner and not an attorney. But complainant hasn't provided any objectively

verifiable proof (for example, names of witnesses, recorded documents or transcripts) to support this allegation. Adverse rulings do not constitute proof of bias. Because there is no evidence that misconduct occurred, this charge must be dismissed. See 28 U.S.C. §352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant further alleges that the judges ignored his request for judicial notice. But all outstanding motions, including the request for judicial notice, were denied in the order denying a certificate of appealability. This charge is dismissed as lacking factual foundation. See 28 U.S.C. § 352(b)(1)(B).

A previous misconduct complaint filed by complainant was also dismissed because the allegations were conclusory and/or related to the merits of the subject judge's rulings. Complainant is cautioned that a "complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints." Judicial-Conduct Rule 10(a); see also In re Complaint of Judicial Misconduct, 552 F.3d 1146, 1148 (9th Cir. Jud. Council 2009).

DISMISSED.