

**FILED**

NOV 03 2009

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

**JUDICIAL COUNCIL  
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF  
JUDICIAL MISCONDUCT**

Nos. 08-90174, 08-90175 and  
08-90176

**ORDER**

**KOZINSKI**, Chief Judge:

Complainant alleges that three circuit judges improperly denied him authorization to file a second or successive habeas petition. This charge relates directly to the merits of the judges' ruling and must therefore be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B); In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

Complainant also alleges that the judges were biased against him because he is mentally incompetent. But complainant hasn't provided any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) to support this allegation. Because there is no evidence that misconduct occurred, these charges must be dismissed as well. 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's request for a certificate of appealability is not cognizable under the misconduct complaint procedure and must therefore be dismissed. See Judicial-Conduct Rule 3(h).

**DISMISSED.**