

JUL 31 2009

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS**JUDICIAL COUNCIL  
OF THE NINTH CIRCUIT****IN RE COMPLAINT OF  
JUDICIAL MISCONDUCT**

Nos. 08-90194 and 09-90129

**ORDER****KOZINSKI**, Chief Judge:

Two misconduct complaints have been filed against two district judges. Complainants were pro se litigants in civil rights actions to which the subject judges were assigned.

Complainants allege that one judge improperly withheld the filing of several of their documents. But withholding of filings, like delay, is not misconduct unless it is habitual or improperly motivated. See Judicial-Conduct Rule 3(h)(3)(B); In re Complaint of Judicial Misconduct, 567 F.3d 429, 431 (9th Cir. Jud. Council 2009). Neither of these is present here. Indeed, the docket reveals that, pursuant to a pre-filing order, the judge reviewed the documents and directed the clerk to file them approximately one month after their receipt and shortly after complainants lodged their misconduct complaint. This claim is dismissed because the conduct alleged is not prejudicial to the effective and expeditious administration of the business of the courts.

One complainant also alleges that the other judge made various improper substantive and procedural rulings. These charges relate directly to the merits of the judge's 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).

One complainant has now filed four misconduct complaints in the past seven years, two of which were jointly filed by both complainants. All raise similar conclusory and/or merits-related allegations. Any future complaints presenting fundamentally the same allegations will be dismissed summarily as frivolous. Complainants are further 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); In re Complaint of Judicial Misconduct, 552 F.3d 1146, 1148 (9th Cir. Jud. Council 2009).

**DISMISSED.**