

MAR 10 2010

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

JUDICIAL COUNCIL
OF THE NINTH CIRCUIT

IN RE COMPLAINT OF
JUDICIAL MISCONDUCT

Nos. 09-90072, 09-90073 and
09-90074

ORDER

KOZINSKI, Chief Judge:

Complainant alleges that two district judges and a magistrate judge made improper substantive and procedural rulings in his civil cases. These charges relate directly to the merits of the judges' rulings and must 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 to challenge a judge's rulings on the merits. See In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

Complainant also alleges that the judges failed to rule on several of his motions. But failure to rule, 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 the judge ruled on some of the motions shortly after this misconduct complaint was filed, and that the other motions were not timely filed by complainant. These charges are therefore

dismissed for failure to allege conduct prejudicial to the effective and expeditious administration of the business of the courts. See 28 U.S.C. § 351(a); Judicial-Conduct Rule 11(c)(1)(A).

Complainant's allegations against court staff are dismissed because this misconduct complaint procedure only applies to federal judges. See Judicial-Conduct Rule 4.

Two previous misconduct complaints filed by complainant were dismissed because the allegations were conclusory and merits-related. 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.