

MAY 21 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALSJUDICIAL COUNCIL
OF THE NINTH CIRCUITIN RE COMPLAINT OF
JUDICIAL MISCONDUCT

Nos. 09-90112 and 09-90113

ORDER

KOZINSKI, Chief Judge:

Complainant alleges that a magistrate judge improperly recommended denying his motion to suppress, and that a district judge improperly adopted this recommendation. He also alleges that the district judge should have recused. These charges relate directly to the merits of the judges' rulings and must be dismissed. 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B); see also In re Complaint of Judicial Misconduct, 579 F.3d 1062, 1064 (9th Cir. Jud. Council 2009). The appellate process, not a misconduct complaint, is the proper vehicle to challenge a judge's rulings on the merits. In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

Complainant alleges that the district judge engaged in improper "ex parte" communication with his defense counsel. It is in no way improper for a judge to speak with counsel outside the presence of his client; the absence of the client does not make this an ex parte contact. See Code of Conduct for United States Judges

Canon 3(A)(4). To the extent appellant is alleging that he was not present for a crucial stage of the criminal proceedings, the contact he describes does not appear to be of this nature. In any event, this is a matter that must be addressed, if at all, through the appellate process. This charge must therefore be dismissed for failure to allege conduct prejudicial to the effective and expeditious administration of the business of the courts. 28 U.S.C. § 351(a); Judicial-Conduct Rule 11(c)(1)(A).

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

To the extent complainant seeks the district judge's recusal and reconsideration of the motion to suppress, these forms of relief are not available under the misconduct complaint procedure. See Judicial-Conduct Rule 3(h).

DISMISSED.