

MAY 24 2010

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 09-90130 and 09-90131

ORDER

KOZINSKI, Chief Judge:

Complainant, a pro se litigant, alleges that the district judge and magistrate judge assigned to his civil case made improper substantive and procedural rulings. 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). A misconduct complaint is not the 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 district judge is unable to perform his duties because he is elderly and has difficulty hearing. Complainant points to a court transcript that he believes supports this allegation, but a review of the transcript reveals that the judge was engaged in the proceedings and had a strong grasp of the case. The judge did ask counsel to repeat themselves on three occasions, but he was able to understand after counsel complied with the requests.

Because there is no evidence that the judge is disabled, this charge must be dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant further alleges that the entire district court is biased against him on account of his race and favors defendants. But complainant hasn't provided any objectively verifiable proof to support these allegations. See In re Complaint of Judicial Misconduct, 569 F.3d 1093, 1093 (9th Cir. Jud. Council 2009). Adverse rulings are not proof of bias or favoritism. See In re Complaint of Judicial Misconduct, 583 F.3d 598, 598 (9th Cir. Jud. Council 2009). Because there is no evidence of misconduct, this charge must be dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant's allegations against court staff, defendants and their counsel, his former counsel and the arbitrator are dismissed because this misconduct complaint procedure applies only to federal judges. Judicial-Conduct Rule 4.

DISMISSED.