

MAR 22 2010

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

Nos. 09-90209 and 09-90219

ORDER

KOZINSKI, Chief Judge:

Complainant, a pro se litigant, rehashes allegations from a previous misconduct complaint attempting to relitigate a district judge's decision not to recuse. In re Complaint of Judicial Misconduct, 579 F.3d 1062 (9th Cir. Jud. Council 2009). That complaint was dismissed because "[t]he judicial misconduct system is emphatically not a forum for disappointed litigants to continue litigation already decided on the merits." Id. at 1064. Complainant's convoluted theory, that the judge ruled against him because complainant's wife brought an unrelated suit against a government agency, the head of which was the judge's friend, remains pure speculation. My order dismissing the prior complaint makes further action on these charges unnecessary. See 28 U.S.C. § 352(b)(1)(A)(iii). Future misconduct complaints presenting fundamentally the same allegations will be dismissed summarily as frivolous.

Complainant newly alleges that the judge improperly held him in contempt

and failed to recuse after he filed a civil case against the judge. Judges are not required to recuse simply because a disgruntled litigant files a misconduct complaint or civil case against them. See Advisory Opinion No. 103, Committee on Codes of Conduct, Judicial Conference of the United States. In any event, these charges are dismissed because they relate directly to the merits of the judge's rulings. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B); In re Complaint of Judicial Misconduct, 579 F.3d at 1064 (a challenge to a failure to recuse "is merits-related and must be dismissed").

Complainant alleges that a second district judge unlawfully deemed him a vexatious litigant and failed to hold a hearing before making this determination. These charges relate directly to the merits of that judge's rulings and are 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's charge that both judges conspired to deprive him of his constitutional rights is dismissed because it is not supported by any objectively verifiable proof. 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 allegations against court staff are dismissed because this

misconduct complaint procedure only applies to federal judges. See Judicial-Conduct Rule 4.

Complainant continues to use the misconduct complaint process to relitigate the first judge's failure to recuse, despite having been declared a vexatious litigant after filing five motions to disqualify and two motions to reconsider the denial of those motions to disqualify, and despite my previous order warning him that the misconduct complaint procedure is not a proper vehicle to pursue such allegations. See In re Complaint of Judicial Misconduct, 579 F.3d at 1064–65. This order, along with complainant's second and third misconduct complaints, will be referred to the Judicial Council to be considered in conjunction with complainant's response to my previous order to show cause.

**DISMISSED and REFERRED TO JUDICIAL COUNCIL
REGARDING POSSIBLE SANCTIONS.**