

JAN 22 2010

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

No. 09-90114

ORDER

KOZINSKI, Chief Judge:

Complainant alleges that the district judge assigned to his criminal cases committed various substantive and procedural errors. 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 the proper vehicle for challenging a judge's rulings. In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

Complainant also alleges that the judge conspired with his former defense counsel and improperly attempted to prevent appellate review of his cases. But complainant hasn't provided any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) to support these allegations. See In re Complaint of Judicial Misconduct, 569 F.3d 1093, 1093 (9th Cir. Jud. Council 2009). Complainant suggests that the judge and his attorney lied when they told him that a witness appeared in response to a subpoena, but he presents no

evidence to support his allegation. Complainant is understandably frustrated that there's no transcript of the meeting with the witness, however judges have discretion to conduct informal hearings. There is no reason to doubt that the hearing took place in the judge's chambers, as the judge and defense counsel reported.

Complainant also claims that the judge tried to frustrate complainant's appeal by allowing his attorney to withdraw immediately after he was sentenced. No such inference can reasonably be drawn. Because there is no evidence of misconduct, these charges must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant's allegations against his former defense counsel are dismissed because this misconduct complaint procedure applies only to federal judges. See Judicial-Conduct Rule 4; In re Complaint of Judicial Misconduct, 567 F.3d 429, 431 (9th Cir. Jud. Council 2009).

DISMISSED.