

JAN 28 2010

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 09-90115 and 09-90137

ORDER

KOZINSKI, Chief Judge:

Complainant, a pro se prisoner, alleges that two district judges committed various substantive and procedural errors. But allegations relating directly to the merits of a judge's rulings can't be vindicated through the misconduct procedure. These charges are therefore 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 also alleges that one judge favored and conspired with defendants, and had an ex parte relationship with defense counsel. He further contends that the judges committed a variety of illegal and unethical acts, including conspiring to kill him. These scurrilous charges are wholly unsupported and seem to be the product of complainant's imagination. Adverse rulings do not constitute proof of favoritism, conspiracy or ex parte contact. 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); In re Complaint of Judicial Misconduct, 569 F.3d 1093, 1093 (9th Cir. Jud. Council 2009).

Complainant further alleges that one judge failed to rule on 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 before this misconduct complaint was filed and resolved the remaining motions shortly thereafter.

Finally, complainant's allegations against defendants, detectives and a state judge are dismissed because this misconduct complaint procedure applies only to federal judges. See Judicial-Conduct Rule 4.

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); In re Complaint of Judicial Misconduct, 522 F.3d 1146, 1148 (9th Cir. Jud. Council 2009).

DISMISSED.