

MAR 10 2011

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

No. 10-90001

ORDER

KOZINSKI, Chief Judge:

A prisoner alleges that a district judge conspired with court staff and his former counsel to alter a court transcript related to his habeas proceedings. There is no proof the judge took any statements off the record. But even if there were, this would constitute misconduct only “if the judge [did] so in order to insulate an action from appellate review or for some other improper motive.” In re Complaint of Judicial Misconduct, 599 F.3d 1087, 1087–88 (9th Cir. 2010). Because there’s no evidence of any improper motive, this charge fails to allege conduct “prejudicial to the effective and expeditious administration of the business of the courts,” and must be dismissed. 28 U.S.C. § 351(a); Judicial-Conduct Rule 11(c)(1)(A). Also, complainant brought the alleged omissions to the judge’s attention in the form of a Rule 60(b) motion, which the judge denied. To the extent complainant challenges that ruling, the charge is dismissed as merits-related. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B).

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

DISMISSED.