

JAN 25 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALSJUDICIAL COUNCIL
OF THE NINTH CIRCUIT

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| IN RE COMPLAINT OF JUDICIAL MISCONDUCT |
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Nos. 10-90045 and 10-90046

ORDER**KOZINSKI**, Chief Judge:

Complainant, a pro se prisoner, alleges that two district judges made various improper substantive and procedural rulings in his habeas and civil cases. These charges relate directly to the merits of the judges' rulings and must be 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 the judges conspired to retaliate against him by "aid[ing] and abett[ing], directly or indirectly, [his] harrassment [sic] and the violation of [his] constitutional rights." He further alleges that one judge tampered with his mail through ex parte communications and that "[t]his is bias." But complainant has provided no 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. 2009).

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 request that the Judicial Council "[p]re-emptively address the conflict or potential conflict between the [j]udges and" a state government must be denied because he hasn't alleged any facts indicating the existence of a conflict of interest. See 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant's allegations against prison officials must be dismissed because the misconduct procedure applies only to federal judges. See Judicial-Conduct Rule 4.

Complainant has filed nine previous complaints, all of which were dismissed because the charges were merits-related, lacked foundation or requested relief that's not available through the misconduct procedure. See In re Complaint of Judicial Misconduct, No. 09-90118 (9th Cir. Jud. Council 2010); In re Complaint of Judicial Misconduct, No. 08-90041 (9th Cir. Jud. Council 2009); In re Complaint of Judicial Misconduct, No. 08-89035 (9th Cir. Jud. Council 2008); In re Charge of Judicial Misconduct, No. 06-89117 (9th Cir. Jud. Council 2007); In re Charge of Judicial Misconduct, No. 06-89080 (9th Cir. Jud. Council 2006); In re Charge of Judicial Misconduct, No. 06-89013 (9th Cir. Jud. Council 2006); In re Charge of Judicial Misconduct, No. 05-89126 (9th Cir. Jud. Council 2006); In re Charge of Judicial Misconduct, No. 05-89060 (9th Cir. Jud. Council 2005), and In

re Charge of Judicial Misconduct, No. 04-89107 (9th Cir. Jud. Council 2004). In a previous order, I cautioned that “a complainant who files vexatious, repetitive, harassing, or frivolous complaints, or otherwise abuses the complaint procedure, may be restricted from filing further complaints.” In re Complaint of Judicial Misconduct, No. 08-89035 (internal quotation marks omitted). Complainant’s continued barrage of frivolous filings is a clear abuse of the misconduct complaint procedure. He is therefore ordered to show cause why he should not be sanctioned by an order requiring him to obtain leave before filing any further misconduct complaints. See Judicial-Conduct Rule 10(a); In re Complaint of Judicial Misconduct, 552 F.3d 1146, 1148 (9th Cir. Jud. Council 2009). Complainant has thirty days from the filing of this order to file a response, which will be transmitted to the Judicial Council for its consideration.

DISMISSED and COMPLAINANT ORDERED TO SHOW CAUSE.