

MAY 24 2011

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

IN RE COMPLAINT OF JUDICIAL MISCONDUCT

No. 10-90091

ORDER**KOZINSKI**, Chief Judge:

Complainant alleges that a district judge improperly dismissed his suit against his habeas counsel, who “criminally maintain[ed] the denial to [him] of several . . . audio recordings” and didn’t address “the lack of mandatory interstate, Lexus-Nexus, for federal jurisdiction” in his underlying criminal case.

(Capitalization altered.) This charge relates 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); In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

Complainant also alleges that the subject judge should have disqualified himself due to a “gross conflict of interest” and “refus[al] to declare all known conflicts of all US. [sic] judges and government actors.” (Capitalization altered.) A “judge’s decision to hear a case rather than to recuse is merits-related” and unreviewable by the Judicial Council. In re Complaint of Judicial Misconduct, 623

F.3d 1101, 1102 (9th Cir. Jud. Council 2010). This charge must therefore be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii).

Complainant claims without any evidence whatsoever that the judge is “still covering up the illegal phone taps” in his criminal case and “sabotage[d]” his civil case. (Capitalization altered.) The judge’s adverse rulings aren’t proof of a cover-up or sabotage. See In re Complaint of Judicial Misconduct, 583 F.3d 598, 598 (9th Cir. Jud. Council 2009). These charges must be dismissed as unfounded. See In re Complaint of Judicial Misconduct, 569 F.3d 1093, 1093 (9th Cir. Jud. Council 2009).

Complainant has filed eight other misconduct complaints, all of which were dismissed. I previously warned him 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.” In re Complaint of Judicial Misconduct Nos. 08-90177 & 09-90068 (9th Cir. Jud. Council 2009).

Complainant has not taken this warning to heart or changed his course of conduct, as is evident from the following paragraph, which he added to the end of his current complaint:

Clearly no expectation of any lawful action by the Judaical Council exist in this complaint, but it will be fun to see what new crimes and misconduct are committed this time by this Judicial Crimes Cover Up Council [it’s hard to see how this Council can not come back with a

ruling of DJ. [name], being grossly conflicted and disqualified in [name] v. [name] . . . but I have faith in the Judicial Counsel to find new crimes to maintain the old crimes covered up in the past by this council and the long full history of involved US. judges from [date] to [date]. (First bracket in original and capitalization altered.)

Complainant is 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.