

JAN 06 2011

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

IN RE COMPLAINT OF JUDICIAL MISCONDUCT

Nos. 10-90102 and 10-90103

ORDER**KOZINSKI**, Chief Judge:

A pro se litigant alleges that a district judge and a magistrate judge improperly dismissed his civil case. These charges relate directly to the merits of the judges' 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 judges engaged in ex parte communications with the defendants in his case, during which they conspired to engage in racketeering. He further claims that when he called one of the judges' chambers, the person who answered confirmed the communication and said "she can only surmise what took place and then she said lets [sic] just say that it is not in your favor and then said that they could care less!" Complainant gives no date or time for any such call, nor the name of the person he claims to have talked to. He identifies the person only as the judge's "clerk/secretary." Complainant's allegations based on the "surmise" of an unidentified person on an unspecified date

as to a conversation the judge supposedly had with third parties are far too speculative to “raise an inference that misconduct has occurred.” 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

To try to support his allegations, complainant provides a list of “[p]eople who know” comprised mainly of government entities including the “Federal Court System” and the “FBI.” But complainant doesn’t explain what information he believes these sources might provide or how they might have obtained it. In the absence of credible allegations or even a basic idea of what information will be found, any inquiry would be an aimless fishing expedition. See In re Complaint of Judicial Misconduct, No. 09-90239, 2010 WL 5300813, at *2 (9th Cir. Dec. 28, 2010) (“[T]he complaint must be more than a suggestion to a Chief Judge that if he . . . looks hard enough in a particular direction, he might uncover misconduct.” (omission in original)). The allegations and list do not, therefore, constitute the sort of objectively verifiable proof necessary to support a misconduct allegation. See In re Complaint of Judicial Misconduct, 584 F.3d 1230, 1231 (9th Cir. 2009) (“[V]ague accusations and convoluted demands don’t satisfy complainant’s obligation to provide objective evidence of misconduct.”). Because there is no evidence that misconduct occurred, 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 the defendants in his civil case, the postal service and a state are dismissed because this misconduct complaint procedure applies only to federal judges. See Judicial-Conduct Rule 4; In re Complaint of Judicial Misconduct, 569 F.3d 1093, 1093 (9th Cir. 2009).

DISMISSED.