

JUN 17 2011

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

IN RE COMPLAINT OF JUDICIAL MISCONDUCT

No. 10-90114

ORDER**KOZINSKI**, Chief Judge:

Complainants filed a misconduct complaint against a district judge. Under our rules, a complaint “must contain a concise statement that details the specific facts on which the claim of misconduct or disability is based.” Judicial-Conduct Rule 6(b); see 28 U.S.C. § 351(a). In particular, Local Misconduct Rule 6.1(b) imposes a five-page limit. Complainants violate these restrictions with dozens of pages labeled “Statement of Facts” throughout their complaint. “Misconduct complaints that don’t comply with section 351(a) or Judicial-Conduct Rule 6(b) are subject to summary dismissal.” In re Complaint of Judicial Misconduct, 630 F.3d 968, 969 (9th Cir. Jud. Council 2010).

The chief judge may nevertheless investigate alleged misconduct even if it is brought to his attention in a defective complaint. See Judicial-Conduct Rule 5(a). “Under Rule 5, a chief judge is required to identify a complaint only if the evidence of misconduct is clear and convincing.” In re Complaint of Judicial Misconduct, No. 10-90096, 2011 WL 1770460, at *1 (9th Cir. Jud. Council 2011)

(internal quotation marks omitted). A cursory review of the several hundred pages complainants have included with their complaint discloses only claims that are merits-related and thus not the proper subject of a misconduct complaint. 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). There's thus no basis for identifying a complaint under Rule 5. "A chief judge's decision not to identify a complaint under Rule 5 is unappealable." In re Complaint of Judicial Misconduct, 2011 WL 1770460, at *1.

DISMISSED.