

APR 26 2011

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

IN RE COMPLAINT OF JUDICIAL MISCONDUCT

No. 10-90134

ORDER**KOZINSKI**, Chief Judge:

A pro se prisoner alleges that a district judge delayed ruling on an amended complaint in his civil case. But the docket shows that the judge dismissed the complaint with prejudice seven days after complainant filed it, so this charge must be dismissed. See In re Complaint of Judicial Misconduct, 567 F.3d 429, 431 (9th Cir. 2009).

Complainant further alleges that the district judge instructed staff to ignore “complainant’s correspondences of inquiry for many years,” and that the “decision to prevent complainant from litigating was personal and with malice.” But court staff did try to communicate with complainant; their correspondence didn’t reach him because it was mailed to his old address. In any event, complainant didn’t ask the court for a status update until after the judge had dismissed the complaint, so he couldn’t have been prevented from litigating his claim. Nor has complainant provided any evidence of “malice.” These charges must also be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant previously filed three misconduct complaints that were dismissed as merits-related, lacking foundation or requesting relief that's not available through the misconduct procedure. See In Re Charge of Judicial Misconduct, No. 06-89092 (9th Cir. Jud. Council 2006); In re Complaint of Judicial Misconduct, No. 08-89034 (9th Cir. Jud. Council 2008); In re Complaint of Judicial Misconduct, No. 08-90216 (9th Cir. Jud. Council 2009). I previously cautioned 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.” See In re Complaint of Judicial Misconduct, No. 08-90216. I reiterate that warning today.

DISMISSED.