

MAY 13 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 10-90169

ORDER

KOZINSKI, Chief Judge:

A pro se prisoner alleges that a district judge improperly failed to order defendants to return “all [his] legal material” or provide him with “eyeglasses to see and use the CD-ROM computers in the law library” and “adequate medical treatment which a surgeon . . . ha[d] prescribed.” Complainant’s supplement alleges that the judge “allowed the defendants to disclose confidential information in complainant’s medical records, in direct violation of the” Fourth Amendment and HIPAA. All these charges relate directly to the merits of the judge’s ruling 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 failed to include a written acknowledgment that this misconduct “procedure cannot change the outcome of” his “underlying case,” as required by Misconduct Local Rule 6.1(d). Although the complaint could be returned as deficient, dismissal of the charges moots the deficiency. Future complaints lacking

this acknowledgment will be returned unexamined.

Complainant has filed seven previous complaints that were dismissed because they were conclusory, merits-related or requested relief that's not available through the misconduct procedure. See In re Complaint of Judicial Misconduct, No. 10-90017 (9th Cir. Jud. Council 2010); In re Complaint of Judicial Misconduct, No. 09-90026+ (9th Cir. Jud. Council 2009); In re Charge of Judicial Misconduct, No. 94-80369 (9th Cir. Jud. Council 1995); In re Charge of Judicial Misconduct, No. 94-80023 (9th Cir. Jud. Council 1995). In a previous order, I cautioned that if complainant "files 'repetitive, harassing, or frivolous complaints,' or otherwise 'abuse[s] the complaint procedure,' he 'may be restricted from filing further complaints.'" In re Complaint of Judicial Misconduct, No. 10-90017 (quoting Judicial-Conduct Rule 10(a)). A complainant who files a frivolous complaint after receiving such a warning would normally be ordered to show cause why he shouldn't have to obtain leave before filing any further complaints. See Judicial-Conduct Rule 10(a); In re Complaint of Judicial Misconduct, 552 F.3d 1146, 1148 (9th Cir. Jud. Council 2009). But because complainant hadn't received my previous warning by the time he mailed the current complaint, I will not order him to show cause at this time.

DISMISSED.