

APR 10 2013

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 12-90121, 12-90122
and 12-90123

ORDER

KOZINSKI, Chief Judge:

A state prisoner alleges that a panel consisting of three circuit judges made improper rulings in his appeal and intentionally failed to address his petition for panel rehearing. One of the circuit judges died after the prisoner filed his complaints. Accordingly, that complaint is dismissed as moot. See *In re Charge of Judicial Misconduct*, 91 F.3d 90, 91 (9th Cir. Jud. Council 1996).

As to the remaining judges, complainant's allegation that the panel disregarded circuit and Supreme Court caselaw in reaching its decision must be dismissed as merits-related. See 28 U.S.C. § 352(b)(1)(A)(ii); *In re Charge of Judicial Misconduct*, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982); Judicial-Conduct Rule 11(c)(1)(B).

Complainant also alleges that the panel ignored his petition for panel rehearing. However, the docket indicates the petition was never received by the court, and complainant offers no proof that it was sent, beyond his handwritten

statement asserting it was. Moreover, complainant later sent a “request for clarification” to the panel, which the panel construed as a petition for panel rehearing and denied. That document raised substantially the same issues as the petition for panel rehearing complainant claims to have sent. Petitioner thus suffered no prejudice from the loss of the original petition, regardless of whose fault the loss might have been. This allegation is therefore dismissed as lacking evidence to raise an inference that misconduct occurred. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.