

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

FILED

NOV 26 2014

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

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 12-90130, 12-90131,
12-90132 and 13-90074

ORDER

KOZINSKI, Chief Judge:

Complainant, a pro se prisoner, filed four misconduct complaints against two district judges and two circuit judges.

While complainant names two circuit judges, the complaints only contain misconduct allegations against one of those judges. Because complainant fails to allege any misconduct by the unmentioned circuit judge, and because there isn't any evidence of misconduct, the allegations must be dismissed as to that judge. See Judicial-Conduct Rule 11(c)(1)(D); see also 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant alleges that the judges made erroneous rulings in his habeas and civil rights cases. These allegations call into question the correctness of the judges' rulings, and must be dismissed because they relate directly to the merits of those rulings. See Judicial-Conduct Rule 3(h)(3)(A); Judicial-Conduct Rule 11(c)(1)(B); In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982); see also 28 U.S.C. § 352(b)(1)(A)(ii).

Complainant also alleges that one of the district judges presided in a case in which the judge was a named defendant. While the judge is listed as a defendant in the complaint, the complaint listed over 10,000 named and unnamed defendants, and appears to include every federal judge who ever issued an order on an issue raised in the complaint. The district judge's failure to recuse himself in such a case isn't misconduct. Just as "[a] litigant is not entitled to rid himself of the judge assigned to his case by adding him as a defendant," In re Complaint of Judicial Misconduct, No. 12-90079 (9th Cir. Jud. Council Sept. 27, 2012) (citing United States v. Studley, 783 F.2d 934, 939–40 (9th Cir. 1986)), a litigant similarly can't manipulate the judicial process by filing a complaint that encompasses every judge in the district (or an unspecified set of judges) as defendants.

In the misconduct context, judges named in a misconduct complaint are generally disqualified from considering the complaint. See Judicial-Conduct Rule 25(b). But we've explained that "rigid adherence to the disqualification requirement is not required where complainant is abusing the complaint process, for example by filing insubstantial complaints naming numerous judges." In re Complaint of Judicial Misconduct, 567 F.3d 429, 430 (9th Cir. Jud. Council 2009). Without such a rule, "all of the judges who would ordinarily be involved in the misconduct complaint procedure" would automatically be disqualified if the

complainant names them. In re Complaint of Judicial Misconduct, 563 F.3d 853, 854 (9th Cir. Jud. Council 2009).

The complaint brought by complainant in the district court—which lists over 10,000 named and unnamed defendants—is likewise an abuse of the federal court system. While such a complaint may not even require recusal of a judge that’s named as a defendant, I need not decide whether the subject judge should have recused to find that the judge’s failure to recuse didn’t amount to misconduct. See Commentary to Judicial-Conduct Rule 3. There’s no evidence that the judge harbored any bias against complainant or was otherwise acting with a corrupt motive. The judge’s conduct wasn’t “prejudicial to the effective and expeditious administration of the business of the courts,” and this misconduct allegation must therefore be dismissed. Judicial-Conduct Rule 3(h)(1)(A); Judicial-Conduct Rule 11(c)(1)(A).

Complainant also alleges that the other district judge and one of the circuit judges presided over cases in which they were subject to a conflict of interest due to complainant’s lawsuits, misconduct complaints and motions for recusal. But the fact that complainant has sued a judge, filed a misconduct complaint against a judge or filed a motion to recuse a judge doesn’t necessarily subject the judge to a disqualifying conflict of interest, see Studley, 783 F.2d at 940; Advisory Op. 103, Comm. on Codes of Conduct, Jud. Conf. of the U.S. (updated 2014), and

complainant provides no evidence that the judges acted with a retaliatory motive. Thus, these allegations must be dismissed as unsupported. See Judicial-Conduct Rule 11(c)(1)(D); see also 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant further alleges that one of the district judges and one of the circuit judges engaged in “ex parte” communications “to bar review or any appeal” of complainant’s habeas case. However, complainant provides no objectively verifiable proof, such as names of witnesses, recorded documents or transcripts, to support this misconduct allegation, see In re Complaint of Judicial Misconduct, 569 F.3d 1093, 1093 (9th Cir. Jud. Council 2009), and thus it must be dismissed as unsupported, see Judicial-Conduct Rule 11(c)(1)(D); see also 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant additionally alleges that the judges committed, and conspired with others to commit, acts of treason, fraud and crimes against humanity. However, adverse rulings alone aren’t evidence of treason or conspiracy, see In re Complaint of Judicial Misconduct, 631 F.3d 961, 962–63 (9th Cir. Jud. Council 2011), and complainant provides no other evidence to support these very serious allegations, see In re Complaint of Judicial Misconduct, 569 F.3d at 1093. Therefore, they must be dismissed as unsupported. See Judicial-Conduct Rule 11(c)(1)(D); see also 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant’s requested forms of relief, such as initiation of impeachment

proceedings and referral of the judge for criminal prosecution, are not forms of relief that are available under the misconduct complaint procedure. See Judicial-Conduct Rule 11(a); 28 U.S.C. § 354(a)(2).

DISMISSED.