

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

FILED

SEP 29 2015

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

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 15-90109 and 15-90110

ORDER

THOMAS, Chief Judge:

Complainant, a pro se prisoner, claims that a district judge and a magistrate judge failed to send him a copy of a report and recommendation issued in his habeas case. Judges are not responsible for mailing orders and do not have supervisory responsibility over the clerk's office personnel in charge of mailing. Regardless, the record shows that the court sent a second copy of the report and recommendation to complainant and granted an additional amount of time in which to file objections. These allegations are dismissed as groundless. See 28 U.S.C. § 352(b)(1)(B).

Complainant further alleges that the district judge had a conflict of interest because he dismissed a previous habeas petition filed by complainant. An allegation that a judge presided in a case knowing that he was subject to a conflict of interest may present a viable claim of judicial misconduct. But to state such a claim, a complainant must provide convincing proof that the judge was aware of the conflict or was acting with a corrupt motive. See In re Complaint of Judicial

Misconduct, 647 F.3d 1181 (9th Cir. Jud. Council 2011). The evidence presented in this case is insufficient to make such a showing, and the allegations are dismissed for lack of objectively verifiable proof. 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

The current complaint also alleges that the district judge should have allowed equitable tolling, which complainant raised in a prior complaint against the district judge. I dismissed that claim as merits-related, see In re Complaint of Judicial Misconduct, No. 14-90028 (9th Cir. Jud. Council Dec. 2, 2014), aff'd, In re Complaint of Judicial Misconduct, No. 14-90028 (9th Cir. Jud. Council Feb. 3, 2015), and therefore, my prior order makes further action on this charge unnecessary. See Judicial-Conduct Rule 11(c)(1)(C); In re Complaint of Judicial Misconduct, 563 F.3d 853, 854 (9th Cir. Jud. Council 2009).

DISMISSED.