

FILED

MAR 1 2018

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 17-90060

ORDER

Before: **CANBY, BYBEE, M. SMITH, N.R. SMITH** and **MURGUIA**,
Circuit Judges, **MOSKOWITZ, PHILLIPS** and **SEABRIGHT**,
Chief District Judges, and **AIKEN** and **MOLLWAY**, District Judges

On December 21, 2017, complainant was ordered to show cause as to why
he should not be sanctioned for abuse of the misconduct complaint procedure.

Complainant did not adequately respond to the Order to Show Cause.

We have carefully reviewed the record. Complainant has filed four separate
misconduct complaints against a total of twenty judges, raising outlandish claims
that have been dismissed as unfounded and frivolous. See *In re Complaint of
Judicial Misconduct*, No. 17-90060 (Ninth Cir. Jud. Council, Dec. 21, 2017); *In re
Complaint of Judicial Misconduct*, No. 17-90023 (Ninth Cir. Jud. Council, Apr.
17, 2017); *In re Complaint of Judicial Misconduct*, No. 16-90158+ (Ninth Cir.
Jud. Council, Dec. 13, 2016); *In re Complaint of Judicial Misconduct*, No. 14-
90136 (Ninth Cir. Jud. Council, Aug. 20, 2015).

In the current complaint, complainant names the entire Judicial Council,

solely because it dismissed a petition for review and declined to investigate complainant's allegations. Judicial Conduct Rule 25(g) provides that Judicial Council members who are named in a misconduct proceeding may participate in its disposition if:

- (A) participation by one or more subject judges is necessary to obtain a quorum of the judicial council;
- (B) the judicial council finds that the lack of a quorum is due to the naming of one or more judges in the complaint for the purpose of disqualifying that judge or judges, or to the naming of one or more judges based on their participation in a decision excluded from the definition of misconduct under Rule 3(h)(3); and
- (C) the judicial council votes that it is necessary, appropriate, and in the interest of sound judicial administration that one or more subject judges be eligible to act.

This is clearly a case that meets all of these criteria. Complainant names the Judicial Council solely because of its disposition of previous misconduct complaints, which is a merits-related decision that is non-cognizable under Judicial-Conduct Rule 3(h)(3). Further, the Commentary to Judicial-Conduct Rule 25 recognizes that multiple-judge complaints are "virtually always meritless," and that it is fair to permit subject judges to review the dismissal of an insubstantial complaint. It is both necessary to obtain a quorum and in the interest of sound judicial administration that the subject Judicial Council members are eligible to act

in this case.

Pursuant to Rule 10(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, we conclude that complainant's right to file further misconduct complaints should be restricted. We direct the Clerk to enter the following pre-filing review order:

Pre-Filing Review Order

(1) This pre-filing review order shall apply to all misconduct complaints or petitions for review filed by complainant.

(2) Any future misconduct complaint or petition for review filed by complainant shall comply with the requirements of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, and shall contain the sentence "THIS COMPLAINT/PETITION IS FILED SUBJECT TO PRE-FILING REVIEW ORDER No. 17-90060" in capital letters in the caption of the complaint or petition.

(3) If complainant submits a misconduct complaint or petition for review in compliance with this order, the Clerk shall lodge the complaint or petition and accompanying documents. The Clerk shall not file the complaint or petition until complainant's submission is reviewed and a determination is made as to whether it merits further review and should be filed.

(4) This pre-filing review order shall remain in effect until further order of the Judicial Council.

Complainant's failure to comply with this order shall result in any new misconduct complaints or petitions for review being dismissed or not being filed and other sanctions being levied as the Judicial Council may deem appropriate.