FILED

JAN 28 2008

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

JUDICIAL COUNCIL

FOR THE NINTH CIRCUIT

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| In re Charge of | ) | No. 07-89122 |
| Judicial Misconduct | ) | MEMORANDUM AND ORDER |

**KOZINSKI**, Chief Judge:

A complaint of misconduct has been filed against two district judges of this circuit, as well as miscellaneous state, county and local officers, and a private party. Administrative consideration of complaints against federal judges is governed by the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability (Misconduct Rules), issued pursuant to the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980. 28 U.S.C. §§ 351–364. The Judicial Council has no jurisdiction to consider complaints against individuals who are not federal judges, so the complaint against all these other parties is accordingly dismissed. Misconduct Rule 1(d).

Complainant, a pro se prisoner, alleges that the judges refused to order sanctions and injunctions to uphold his constitutional rights and to enforce an

order regarding electronic filing due to his indigence.

Complainant mentions two cases in his complaint—a civil rights case and a petition for a writ of habeas corpus—both of which are assigned to one of the subject judges. In the civil rights case, the judge denied in forma pauperis status and dismissed the case because complainant failed to show cause why the case should not be dismissed under 28 U.S.C. § 1915(g) (providing that a prisoner may not bring a civil action in forma pauperis if he has, three or more times, brought an action that was dismissed as frivolous, malicious or failing to state a claim). The judge has not issued any orders in the habeas matter.

Complainant also refers to an order issued in the civil rights case by the other subject judge regarding the court's electronic filing practice. The order states that cases with unrepresented litigants, in which at least one party is represented, will no longer be excluded from the e-filing program. The order explains that represented parties still will be required to serve paper copies by mail on unrepresented parties and that, as before, unrepresented litigants will continue to file and serve all submissions to the court in paper form unless prior leave is obtained.

The allegation that the judges have improperly refused to order sanctions and injunctions—possibly contributing to the alleged denial of PACER access, a

lawyer, discovery, access to copies and mail service—relates to the judges' rulings and decisions in the cases. A complaint will be dismissed if it is directly related to the merits of a judge's ruling or decision in the underlying case. 28 U.S.C. § 352(b)(1)(A)(ii); Misconduct Rule 4(c)(1). The procedures for judicial misconduct are not a proper venue for challenging a judge's rulings. See In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

To the extent complainant is alleging an improper delay in issuing orders in the habeas matters, the allegation is dismissed. Complainant cannot challenge alleged delay under the misconduct procedures unless the circumstances are extraordinary, as "where the delay is habitual, is improperly motivated or is the product of improper animus or prejudice toward a particular litigant, or, possibly, where the delay is of such an extraordinary or egregious character as to constitute a clear dereliction of judicial responsibilities." Commentary on Misconduct Rule 1. Such is not the case here.

Complainant's allegation that he was discriminated against on the basis of indigence lacks factual support. The judge's order denying in forma pauperis status and dismissing the civil rights case was not based on proof of indigence, but was instead based on the requirements in 28 U.S.C. § 1915(g) regarding multiple filings by prisoners. A complaint will be dismissed when a limited inquiry

demonstrates that the allegations in the complaint lack any factual foundation or are wholly unsupported. 28 U.S.C. § 352(b)(1)(A)(iii), (b)(1)(B); Misconduct Rule 4(c)(3).

The complaint is therefore ordered **DISMISSED.**