

FILED

MAR 18 2003

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

JUDICIAL COUNCIL

FOR THE NINTH CIRCUIT

In re Charge of)

Judicial Misconduct)

No. 03-89009

ORDER AND

MEMORANDUM

Before: SCHROEDER, Chief Judge

A complaint of misconduct has been filed against three district judges and one magistrate judge of this circuit.

Administrative consideration of such complaints 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.

Complainants, pro se defendants in a civil case, allege that the judges made errors of law by proceeding with the case after an order established that certain defendants were immune and that certain claims were dismissed. They further contend that the judges engaged in a conspiracy against them, acted in the absence of jurisdiction, and "fabricated" subject matter jurisdiction. Complainants also allege that a judge who recused himself sua

sponte should have provided a reason, and that the magistrate judge overstepped his authority in the case.


Despite complainants' submission of voluminous exhibits, their charges that certain orders were falsified, subject matter jurisdiction was "fabricated," and that the judges engaged in a conspiracy are conclusory. Complainant failed to include any objectively verifiable proof (for example, names of witnesses, recorded documents, or transcripts) supporting their allegations. Furthermore, complaints alleging misconduct occurring in open court should be supplied with the specific date of occurrence, the details of the hearing, and if possible, copies of transcripts. Conclusory charges that are wholly unsupported, as here, will be dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Misconduct Rule 4(c)(3). These charges, therefore, are dismissed.

The magistrate judge acted within his within purview, and as such, the charged conduct does not amount to misconduct. A complaint will be dismissed if when considering all of the allegations as true, the charged behavior still does not constitute "conduct prejudicial to the effective and expeditious administration of the business of the courts

... ." Misconduct Rule 4(c)(2)(A); 28 U.S.C. § 351(a).

The remaining allegations pertain to the judges' decisions in the case. 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). A challenge to the judges' rulings should be sought through the correct review procedure and not through the procedures for judicial misconduct. See In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982) (If complainant wants to challenge the judges' rulings, correct review procedure, "not the procedures for judicial misconduct, [is] the proper remedy.") Only a court has the power to change a decision or ruling. The judicial council, the body that takes action under the misconduct complaint procedure, does not have that authority. Even multiple or very wrong legal decisions may be addressed under the ordinary course of appellate review. These charges, therefore, are also dismissed.

COMPLAINT DISMISSED.


Chief Judge