

**FOR PUBLICATION**  
**JUDICIAL COUNCIL**  
**OF THE NINTH CIRCUIT**

IN RE COMPLAINT  
OF JUDICIAL MISCONDUCT

No. 08-90026  
ORDER

Filed September 23, 2009

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**ORDER**

KOZINSKI, Chief Judge:

A misconduct complaint has been filed against a district judge. The subject judge presided over a criminal case, to which complainants were not parties.

Complainants allege that the judge made various improper substantive and procedural rulings. These charges relate directly to the merits of the judge's rulings and must therefore be dismissed. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rules 3(h)(3)(A), 11(c)(1)(B); *In re Charge of Judicial Misconduct*, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

Complainants also contend that the judge should have recused himself. The same claim—based on the same facts alleged by complainants—was rejected in an appeal by one of the parties to the criminal case. The court of appeals specifically held that the judge may preside over the case on remand. The judge's failure to recuse himself based on these allegations therefore cannot constitute past or future misconduct.

**DISMISSED.**

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