JUDICIAL COUNCIL

OF THE NINTH CIRCUIT

IN RE COMPLAINT OF	No. 08-89002
JUDICIAL MISCONDUCT	**ORDER**

SCHROEDER, Circuit Judge:

A complaint of misconduct has been filed against seven circuit judges of this circuit. Complainant, a pro se litigant, complains about a 2006 appeal and a 2007 appeal in two civil rights cases. Six of the subject judges sat on panels that issued orders or memorandums in the appeals. A related misconduct complaint by complainant against three of the subject judges was previously dismissed.

Complainant alleges that his 2006 appeal was decided incorrectly and that the memorandum affirming the district court's decision did not sufficiently discuss his case. He further alleges that the dismissal of his 2007 appeal for lack of jurisdiction was legally erroneous. Because these charges are directly related to the merits of the judges' rulings in the underlying cases, they must be dismissed. 28 U.S.C. § 352(b)(1)(A)(ii); Rule 4(c)(1) of the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability (Misconduct Rules). A complaint of judicial misconduct is not a proper vehicle for

challenging a judge's rulings. See In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

Complainant also alleges that the court violated 18 U.S.C. § 2071(a) by failing to mention in the 2006 appeal memorandum that the district court had dismissed "with prejudice." Section 2071(a) does not require any specific content in a memorandum, including whether a district court's decision was with or without prejudice. Thus, this allegation is unfounded, and the charge is dismissed because the charged behavior does not amount to "conduct prejudicial to the effective and expeditious administration of the business of the courts." Misconduct Rule 4(c)(2)(A); see 28 U.S.C. § 351(a).

Complainant alleges that he sent a letter to one of the subject judges regarding his previous misconduct complaint and that the judge received the letter on the same day that his 2006 appeal was assigned to a screening panel. He believes that as a result of the judge reading his letter, the judge improperly orally requested to assign the case to a screening panel. Complainant is misreading the docket entry, which only indicates that the case was assigned to an oral screening panel; it does not indicate that any oral request was made regarding the assignment. In addition, cases are assigned to an oral screening panel based on standard court procedures that do not normally involve requests from judges. There is nothing

here to indicate that the subject judge had any involvement in the assignment of the case to a screening panel, and complainant has not included any objectively verifiable proof supporting the allegation. Because there is not sufficient evidence to raise an inference that misconduct occurred, the charge is dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Misconduct Rule 4(c)(3).

Complainant contends that the disposition of his 2006 appeal was influenced by ex parte communication with unknown persons, and he further demands transcripts of alleged meetings with those unknown persons. He also questions the appearance of the same initials at the bottom of both appeal orders, and suggests that it indicates foul play such as collusion, obstruction of justice, slander and discrimination. He further alleges that the judges' actions demonstrate dishonesty and discrimination. Complainant has not included any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) supporting these bias-related allegations. As explained in the previous order dismissing complainant's related misconduct complaint, the initials on each order signify the staff member who assisted with research. Because there is not sufficient evidence to raise an inference that misconduct occurred, the charges are dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Misconduct Rule 4(c)(3).

Complainant alleges that the court received a brief from him but improperly

chose not to file that brief. Although he states in the complaint that the brief was submitted for the 2006 appeal, there is no reason why he would have submitted that brief for the 2006 appeal because he had already filed his opening brief and a reply brief would have been untimely. Thus, it appears complainant is referring to a brief he submitted for the 2007 appeal, which the court did receive but did not file because the court had dismissed the appeal several days earlier. This charge is dismissed because the charged behavior does not amount to "conduct prejudicial to the effective and expeditious administration of the business of the courts." Misconduct Rule 4(c)(2)(A); see 28 U.S.C. § 351(a).

Complainant alleges that the judges who dismissed his 2007 appeal deprived him of his "right of equal access to [the] court" by ordering him "not to file any papers." It appears he is referring to an order denying his motion for reconsideration and stating that no further motions for reconsideration, rehearing, modification, clarification, stay of the mandate or any other submissions would be filed or entertained in the closed case. The order properly states that further submissions would not be filed because the case was closed. This charge is dismissed because the charged behavior does not amount to "conduct prejudicial to the effective and expeditious administration of the business of the courts." Misconduct Rule 4(c)(2)(A); see 28 U.S.C. § 351(a).

Complainant alleges that a motion was not ruled on for over four months. 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. This charge is dismissed because a delay of four months does not constitute extraordinary circumstances.

DISMISSED.