

DEC 03 2008

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 08-89004

ORDER

KOZINSKI, Chief Judge:

A misconduct complaint has been filed against a district judge and a magistrate judge. Complainant, a pro se litigant, filed a civil rights action in district court. The subject judges were assigned to the matter.

Complainant alleges that the judges unfairly delayed rulings in his case. Delay is not a proper subject of a misconduct complaint unless the circumstances are extraordinary, such 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. If complainant seeks a ruling on a pending matter, a petition for mandamus can sometimes be used for that purpose. See Misconduct Rule 1(f).

Complainant alleges that the judges improperly dismissed certain claims,

refused to grant a preliminary injunction and ruled on motions without requiring defendants to respond. These charges relate directly to the merits of the judges' rulings and must therefore be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Misconduct Rule 4(c)(1). A misconduct complaint is not a proper vehicle for challenging the merits of a judge's rulings. See In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

Complainant alleges that the judges intentionally confused, harassed and blackmailed him into dismissing certain claims from his complaint. He also alleges that the judges obstructed justice, intentionally concealed documents and conspired to cover up criminal wrongdoing by the state and federal governments. But complainant hasn't provided any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) to support these allegations. Because there isn't sufficient evidence to raise an inference that misconduct occurred, these charges must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Misconduct Rule 4(c)(3); Commentary on Misconduct Rule 4.

Complainant further alleges that the case was improperly referred to the magistrate judge. However, it is permissible for many pretrial matters to be handled by a magistrate judge. See 28 U.S.C. § 636. This charge must be dismissed because the charged behavior does not amount to "conduct prejudicial to

the effective and expeditious administration of the business of the courts.” See 28 U.S.C. § 351(a); Misconduct Rule 4(c)(2)(A).

Finally, complainant alleges that court staff stole or improperly refused to docket certain documents and failed to send him a copy of an order. These charges must be dismissed because this complaint procedure applies only to federal judges, not to staff. See Misconduct Rule 1(d).

DISMISSED.