

JAN 14 2009

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

JUDICIAL COUNCIL  
OF THE NINTH CIRCUIT

IN RE COMPLAINT OF  
JUDICIAL MISCONDUCT

No. 08-89005

ORDER

**KOZINSKI**, Chief Judge:

A misconduct complaint has been filed against a magistrate judge.

Complainant, a pro se prisoner, filed a habeas petition and a civil rights action in district court. Both matters were referred to the subject judge.

Complainant alleges that the judge improperly denied and rejected his discovery motions. This charge relates directly to the merits of the judge's 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 also alleges that the judge was racist. But complainant hasn't provided any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) to support this allegation. Because there isn't sufficient evidence to raise an inference that misconduct occurred, this charge must

be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Misconduct Rule 4(c)(3);

Commentary on Misconduct Rule 4.

**DISMISSED.**