

DEC 05 2008

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

**JUDICIAL COUNCIL  
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF  
JUDICIAL MISCONDUCT**

No. 08-89034

**ORDER**

**KOZINSKI**, Chief Judge:

A misconduct complaint has been filed against a magistrate judge. Complainant, a pro se prisoner, filed a civil rights action in district court. The matter was referred to the subject judge.

Complainant alleges that the judge ignored his request for a copy of his civil rights complaint. Court staff responded to complainant's request by sending him a file-stamped face page of the complaint and notifying him that the court does not provide copies of documents to parties. Because this charge lacks factual foundation, it must be dismissed. See 28 U.S.C. § 352(b)(1)(B). To the extent that complainant objects to the fact that court staff refused to provide him a copy of his complaint, this charge must be dismissed because it relates to actions taken by court staff, and this misconduct complaint procedure applies only to federal judges. See Misconduct Rule 1(d).

Complainant also alleges that the judge ignored his motion to extend the

time in which to conduct discovery. 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.

Complainant further alleges that the judge misconstrued facts in his Findings and Recommendation, and made incorrect discovery rulings. These charges must be dismissed because they relate directly to the merits of the judge’s rulings. 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).

Finally, complainant alleges that the judge was biased in favor of defendants. But complainant doesn’t provide 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.**