

DEC 12 2008

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 08-89035

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 was biased against him on account of his gender and his prisoner status. Complainant also alleges that the judge had a conflict of interest due to her close ties with the state. But complainant hasn't included any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) supporting 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).

Complainant alleges that the judge was condescending toward him and exhibited partiality toward the attorney representing the state during a hearing. But

the audio recording of the hearing discloses that the judge was courteous and did not show bias for or against either side. These charges must be dismissed as lacking factual foundation. See 28 U.S.C. § 352(b)(1)(B).

Complainant further alleges that the judge's discovery rulings obstructed justice and impeded complainant's ability to prove his claims. 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); 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 has filed six other misconduct complaints in the past five years, all of which have been dismissed because complainant's allegations were conclusory and/or related to the merits of the subject judges' rulings.

Complainant is cautioned that "a complainant who files vexatious, repetitive, harassing, or frivolous complaints, or otherwise abuses the complaint procedure," may be restricted from filing further complaints. Misconduct Rule 1(g).

DISMISSED.