

DEC 02 2008

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

JUDICIAL COUNCIL
OF THE NINTH CIRCUIT

IN RE COMPLAINT OF
JUDICIAL MISCONDUCT

No. 08-89036

ORDER

KOZINSKI, Chief Judge:

A complaint of misconduct has been filed against a district judge.

Complainant, a pro se prisoner, filed two civil rights actions to which the subject judge was assigned.

Complainant alleges that the judge failed to rule on several motions.

However, delay is not the 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 motion that is pending before the judge, a petition for mandamus can sometimes be used for that purpose. See Misconduct Rule 1(f).

Complainant appears to allege that the judge improperly ruled on a motion

to disqualify him due to bias. The judge found the motion to be legally insufficient because the allegations of bias were based solely on his rulings in a prior case, and therefore it was proper for him to rule on the motion rather than refer it to another judge. See Toth v. Trans World Airlines, Inc., 862 F.2d 1381, 1387–88 (9th Cir. 1988). 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). To the extent that complainant also alleges that the judge incorrectly denied the motion, the charge must be dismissed because it relates directly to the merits of the judge’s ruling. See 28 U.S.C. § 352(b)(1)(A)(ii); Misconduct Rule 4(c)(1). A complaint of 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’s request that the motion to disqualify be reviewed as part of this misconduct complaint is construed as an allegation of bias. Complainant hasn’t included any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) other than the judge’s prior rulings 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.