

JAN 13 2009

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 08-89046

ORDER

KOZINSKI, Chief Judge:

A misconduct complaint has been filed against a district judge.

Complainant, a pro se prisoner who is an attorney, filed a habeas petition in district court. The subject judge was assigned to the matter.

In his misconduct complaint and first supplement to the misconduct complaint, complainant alleges that the judge unduly delayed and failed to rule on his habeas petition and related motions. Delay is not a proper subject for 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. A review of the docket discloses that the judge addressed approximately 50 of complainant’s motions during the course of seven months. The judge’s attention to

complainant's case deserves commendation rather than censure .

In his second supplement to the misconduct complaint, complainant alleges that the judge's orders addressing his petition and motions were not "lawful decisions." 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 complaint of judicial misconduct 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 further alleges that the judge's decision to take motions under submission rather than ruling on them immediately was the result of a "possible improper ex parte relationship" with the U.S. Attorney's Office that prosecuted complainant. But complainant hasn't included any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) to support this allegation of an improper relationship. Because there is no 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). To the extent that complainant alleges that it was otherwise improper for the judge to take motions under submission, the charge must be dismissed because it is not improper for a judge to take some time to deliberate over a matter before ruling. And, as noted above,

there was no undue delay on the judge's part in ruling on complainant's multiple motions.

As an attorney, complainant has a particular duty not to file frivolous pleadings of any kind, including frivolous complaints of judicial misconduct. The standards for filing a misconduct complaint are clear and well established. Complainant should have known that the misconduct complaint and supplements that he filed are frivolous and abusive. Complainant is admonished to refrain from filing frivolous misconduct complaints and cautioned that he may be subject to sanctions if he does so in the future. See In re Complaint of Judicial Misconduct, 2008 WL 5220294, at *2 (9th Cir. Jud. Council Dec. 10, 2008).

DISMISSED.