

DEC 31 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT****IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 08-90012

ORDER**KOZINSKI**, Chief Judge:

A misconduct complaint has been filed against a district judge. The subject judge was assigned to a criminal proceeding.

Complainant, not a party to the proceeding, alleges that the judge engaged in ex parte communications with the prosecutors. But complainant hasn't included any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) to support this allegation. The only evidence complainant submitted was an excerpt from a transcript in which one of the defendants accused the judge of holding an ex parte hearing. 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); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.