

FEB 24 2009

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 08-90037, 08-90107 and
08-90108

ORDER

KOZINSKI, Chief Judge:

Two misconduct complaints have been filed against a district judge. Complainant, a pro se litigant, filed three civil rights actions in district court. The subject judge was assigned to the matters.

Complainant alleges that the judge made disparaging and demeaning remarks to him. But complainant hasn't provided any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) to support this allegation. Nor did a limited inquiry reveal any improper demeanor on the judge's part. Because there is no evidence 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).

Complainant also alleges that the judge should not have accepted assignment of his third civil rights case over his protest. Complainant appears to be claiming that the judge should have recused himself from the case. This charge relates

directly to the merits of the judge's decision whether to recuse and must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B); Commentary on Judicial-Conduct Rule 3. To the extent that complainant is asking for his case be transferred to a magistrate judge, this request is not cognizable and is therefore dismissed. See Judicial-Conduct Rule 3(h).

Complainant further alleges that the judge has ignored his pending civil rights matter. Delay is not cognizable “unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” Judicial-Conduct Rule 3(h)(3)(B). Complainant has provided no evidence of improper motive or habitual delay here.

Complainant's allegations against state hospital staff and the court-appointed monitor must be dismissed because this misconduct complaint procedure applies only to federal judges. See Judicial-Conduct Rule 4.

Complainant also filed a misconduct complaint against another district judge who has since resigned. That complaint is dismissed as moot. See In re Charge of Judicial Misconduct, 91 F.3d 90, 91 (9th Cir. Jud. Council 1996).

DISMISSED.