

JUN 02 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALSJUDICIAL COUNCIL
OF THE NINTH CIRCUIT

IN RE COMPLAINT OF
JUDICIAL MISCONDUCT

No. 08-90130

ORDER**KOZINSKI**, Chief Judge:

A misconduct complaint and a supplement have been filed against a district judge. Complainant was a party in two civil cases to which the subject judge was assigned.

Complainant alleges that the judge made various improper substantive and procedural rulings. These charges relate directly to the merits of the judge's decisions and must therefore be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B); Judicial-Conduct Rule 3(h)(3)(A). 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 alleges that the judge intentionally assigned the first case to himself for improper reasons. But the docket reveals that the case was reassigned to the judge by the clerk pursuant to the order of the chief district judge, so this

charge is dismissed as lacking factual foundation. See 28 U.S.C. § 352(b)(1)(B). Complainant suggests that the judge withheld court records that would show that he improperly assigned himself the case. But complainant hasn't provided any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) to support this allegation, so this charge is dismissed for lack of evidence that misconduct occurred. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant also alleges that the judge improperly assigned the second case to himself as a related case, even though he was named as a defendant. The docket reveals that the judge recused himself shortly after the assignment, and therefore intervening events make further action on this charge unnecessary. See 28 U.S.C. § 352(b)(2).

Complainant alleges that the judge was biased and favored plaintiff's counsel. But complainant hasn't provided any objectively verifiable proof to support this allegation. Adverse rulings do not constitute proof of bias. And even if, as complainant asserts, plaintiff's counsel was a personal friend of the judge, this fact alone does not suggest that the judge failed to handle the case in a fair and impartial manner. 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 alleges that the judge unduly delayed ruling on his discovery motions. 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 provides no evidence of improper motive or habitual delay here. Moreover, a review of the docket reveals that the judge addressed complainant’s many motions in a timely manner.

Complainant further alleges that the judge failed to rule on several post-judgment motions, and that the judge altered the docket to state that the motions had been withdrawn in order to cover up his misconduct. But complainant provides no objectively verifiable proof of misconduct with regard to these motions or the docket. Therefore this charge must also be dismissed for lack of evidence that misconduct occurred. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D). To the extent the motions were terminated in error, complainant should have pursued the matter in the district court or by filing a petition for a writ of mandamus; a misconduct complaint is not a proper means of correcting judicial mistakes. See In re Charge of Judicial Misconduct, 685 F.2d at 1227.

Complainant's allegations against court staff are dismissed because this misconduct complaint procedure applies only to federal judges. See Judicial-Conduct Rule 4.

DISMISSED.