

AUG 18 2008

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 07-89138

ORDER

KOZINSKI, Chief Judge:

A misconduct complaint has been filed against a district judge. Complainant, a pro se litigant, applied to proceed in forma pauperis in his civil rights action. The judge denied the application, adopting a magistrate judge's order finding that complainant failed to include sufficient information. The judge gave complainant the option of submitting an amended application or paying the filing fee.

Complainant filed an amended application. The judge denied the amended application because it didn't remedy the deficiencies in the original application. The judge gave complainant ten days to file another application or pay the filing fee. Complainant did neither, and the judge dismissed for failure to prosecute.

Complainant alleges that the judge applied an incorrect evidentiary standard to his in forma pauperis application. He also alleges that the judge improperly dismissed his civil rights complaint. These charges are dismissed because they

relate directly to the merits of the judge's rulings. 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 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 was prejudiced against him, but he hasn't supported the allegation with objectively verifiable proof, such as names of witnesses, recorded documents or transcripts. Because there isn't sufficient evidence to raise an inference that misconduct occurred, these charges are dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Misconduct Rule 4(c)(3).

Complainant alleges that the judge maliciously delayed the denial of his original in forma pauperis application. He filed the application in May, the case was assigned to the judge in July, and the judge denied the application in October. Complainant hasn't included objectively verifiable proof supporting his allegation that the delay was based on malice, nor is the delay so extraordinary as to raise an inference of impropriety. See Commentary on Misconduct Rule 1. Because there isn't sufficient evidence to support an inference that misconduct occurred, the charge is dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Misconduct Rule 4(c)(3).

DISMISSED.