

AUG 25 2008

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 08-89044

ORDER

KOZINSKI, Chief Judge:

A misconduct complaint has been filed against a district judge.

Complainant, a pro se litigant, filed a tort claim in federal district court. The judge dismissed the complaint for lack of jurisdiction.

Complainant alleges that the judge used racial epithets and threatened him with physical violence. Complainant hasn't included any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) supporting these allegations. The case didn't involve any hearings or meetings at which the judge could have communicated with complainant, and the only order issued in the case doesn't include any of the alleged statements.

Because there isn't sufficient evidence to raise an inference that misconduct occurred, these charges must be dismissed. Misconduct Rule 4(c)(3); see 28 U.S.C. § 352(b)(1)(A)(iii).

DISMISSED.