

APR 01 2009

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

No. 08-90042

ORDER**KOZINSKI**, Chief Judge:

A misconduct complaint has been filed against a magistrate judge. Complainant, a pro se prisoner, filed a civil rights action in district court. The matter was referred to the subject judge.

Complainant alleges that the judge delayed ruling on his motions due to bias. But complainant provides no evidence of bias or other improper motive for the alleged delay. See Judicial-Conduct Rule 3(h)(3)(B). Moreover, a review of the docket for the two years before this misconduct complaint was filed reveals that complainant submitted over 60 motions and notices, and that the judge addressed most of complainant's motions within several months. Because there is no evidence that misconduct occurred, complainant's charges of delay and bias must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant suspects that the judge engaged in improper ex parte

communications with defense counsel. But complainant hasn't included any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) to support this allegation. 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).

Complainant alleges that the judge improperly ruled on his motion for recusal and ruled on motions that should have been decided by an Article III judge. These charges relate directly to the merits of the judge's rulings and must therefore be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B). To the extent that complainant alleges that the judge made other improper decisions, these charges must also be dismissed as merits-related. A misconduct complaint is not the 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's requests that his interlocutory appeal be certified and that his case be transferred to a district judge are not cognizable under the misconduct complaint procedure and are therefore dismissed. See Judicial-Conduct Rule 3(h).

DISMISSED.