

JUN 04 2009

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

IN RE COMPLAINT OF  JUDICIAL MISCONDUCT
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No. 08-90106

**ORDER****KOZINSKI**, Chief Judge:

A misconduct complaint has been filed against a district judge. Complainant was defendant in a criminal case and a civil enforcement action assigned to the subject judge.

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). 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 was biased against him and favored the government. Complainant also alleges that the judge conspired against him in various ways. But complainant hasn't provided any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) supporting

these allegations. Opinions allegedly expressed by third parties to the effect that the judge disliked complainant or favored the government do not constitute proof of misconduct. Because there is no evidence that misconduct occurred, these charges 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 had a conflict of interest because the judge formerly represented a newspaper that covered his criminal case and because the judge had a personal relationship with his appointed defense counsel. But a prior relationship with a newspaper containing coverage of a pending case or a friendship with an attorney involved in the case do not, without more, create a conflict of interest or suggest bias that would prevent fair judgment in the case. 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).

Complainant further alleges that the judge purposefully delayed his criminal case. 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 alleges that the delay here was due to an improper motive on the judge’s part, but provides no evidence to support this allegation.

To the extent complainant raises allegations against the government and other individuals involved in his cases, the charges are dismissed because this misconduct complaint procedure applies only to federal judges. See Judicial-Conduct Rule 4.

Complainant's requests that he be released from pre-trial detention and that his cases be assigned to another judge are dismissed as non-cognizable. See Judicial-Conduct Rule 3(h).

**DISMISSED.**