

**FILED**

JAN 05 2010

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

**JUDICIAL COUNCIL  
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF  
JUDICIAL MISCONDUCT**

No. 09-90059

**ORDER**

**KOZINSKI**, Chief Judge:

Complainant alleges that a magistrate judge made various improper substantive and procedural rulings. 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). A misconduct complaint is not the 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 also alleges that the magistrate judge was biased against him on account of his race, harassed him, conspired with the defendants and had a conflict of interest. Complaint additionally alleges that various other judges hindered and delayed his litigation. But complainant hasn't provided any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) to support these allegations. See In re Complaint of Judicial Misconduct, 569 F.3d 1093, 1093 (9th Cir. Jud. Council 2009). Adverse rulings

do not constitute proof of bias or favoritism. Because there is no evidence of misconduct, these charges must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant further alleges that the magistrate judge failed to rule on two of his motions. The judge issued a report and recommendation regarding one of the motions, and it is now pending before a district judge for resolution. The other motion was pending before a district judge, not the magistrate judge, and the case is now closed. It is not apparent why this motion went unresolved, but failure to rule, like delay, is not misconduct unless it is habitual or improperly motivated. See Judicial-Conduct Rule 3(h)(3)(B); In re Complaint of Judicial Misconduct, 567 F.3d 429, 431 (9th Cir. Jud. Council 2009). Neither of these is present here. These charges are dismissed because the conduct alleged is not prejudicial to the effective and expeditious administration of the business of the courts. See Judicial-Conduct Rule 11(c)(1)(A).

Complainant's allegations against court staff, defendants and counsel are dismissed because this misconduct complaint procedure applies only to federal judges. See Judicial-Conduct Rule 4; In re Complaint of Judicial Misconduct, 567 F.3d at 431.

Complainant's requests that the judge be removed from his cases and that he

receive damages are not cognizable under the misconduct complaint procedure.

See Judicial-Conduct Rule 3(h); In re Complaint of Judicial Misconduct, 567 F.3d at 431. Complainant's request for a hearing regarding this misconduct complaint is denied.

In addition to this misconduct complaint, complainant has filed two lawsuits against the subject judge. Complainant also claims that this is his third or fourth misconduct complaint against the subject judge, although our records show no other complaints. Complainant is cautioned that “[a] complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints.” Judicial-Conduct Rule 10(a); In re Complaint of Judicial Misconduct, 522 F.3d 1146, 1148 (9th Cir. Jud. Council 2009).

**DISMISSED.**