

FILED

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 07-89115

MEMORANDUM AND ORDER

KOZINSKI, Chief Judge:

A complaint of misconduct has been filed against a magistrate judge of this circuit. Complainant, a pro se prisoner, filed a petition for a writ of habeas corpus that was referred to the subject judge. The judge issued a lengthy Report and Recommendation. After complainant filed objections, a district judge adopted the recommendations, dismissed the petition, and denied a certificate of appealability. The court of appeals also denied a certificate of appealability. Complainant then filed a civil rights complaint against the subject judge that was dismissed for failure to prosecute. The court of appeals also denied a related petition for a writ of mandamus.

Complainant alleges that the judge was biased against him, but he hasn't included any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) supporting his allegation of bias. 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); Rule 4(c)(3) of the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability (Misconduct Rules).

Complainant alleges that the judge made erroneous findings, misrepresented evidence, misconstrued claims and reached incorrect legal conclusions in the Report and Recommendation. Because the charges are directly related to the merits of a judge's ruling or decision in the underlying case, they must be dismissed. 28 U.S.C. § 352(b)(1)(A)(ii); Misconduct Rule 4(c)(1). A complaint of judicial misconduct 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).

DISMISSED.