

MAR 18 2010

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

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| IN RE COMPLAINT OF<br><br>JUDICIAL MISCONDUCT |
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No. 08-90251

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

A misconduct complaint and a supplement have been filed against a magistrate judge assigned to complainant's civil rights case. Much of the complaint is an effort by complainant to re-litigate his district court case. But the proper vehicle for disputing adverse rulings is an appeal, not a misconduct complaint. Because these charges relate directly to the merits of the judge's rulings, they must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B); In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

Complainant next alleges that the judge refused to file one of his discovery motions. But a review of the docket sheet shows that the motion was filed, and complainant offers no evidence to the contrary. This charge is dismissed as lacking a factual foundation. See 28 U.S.C. § 352(b)(1)(B).

Complainant also alleges that the judge was biased against him because he's

pro se and because of the nature of his claim. He charges that the judge favored the defendants as well. 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 alone do not constitute proof of bias. In re Complaint of Judicial Misconduct, 583 F.3d 598, 598 (9th Cir. Jud. Council 2009). 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 further alleges that the judge demonstrated hostility towards him and points to an order as evidence. A review of this order does not demonstrate hostility. 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's next request—that the judge be recused or the case be reassigned—is not cognizable in these proceedings. See Judicial-Conduct Rule 3(h). Finally, complainant's allegations against court staff, defendants and defendants' counsel are not cognizable either; the misconduct complaint procedure applies only to federal judges. See Judicial-Conduct Rule 4; In re Complaint of

Judicial Misconduct, 570 F.3d 1144, 1144 (9th Cir. Jud. Council 2009).

**DISMISSED.**