

MAR 12 2009

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 08-90028

ORDER

KOZINSKI, Chief Judge:

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

Complainant alleges that the judge unduly delayed the resolution of his 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 provided no evidence of improper motive or habitual delay here.

Complainant also alleges that the judge is biased against indigent pro se litigants. Complainant claims that the judge demonstrated this bias during a hearing. But a review of the audio recording of the hearing revealed that the judge was courteous and patient, and did not make any statements suggesting that he harbored any bias against complainant. Because there is no evidence that

misconduct occurred, this charge must be dismissed. See 28 U.S.C.

§ 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.