

JUN 23 2009

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

IN RE COMPLAINT OF JUDICIAL MISCONDUCT

No. 08-90084

ORDER**KOZINSKI**, Chief Judge:

A misconduct complaint has been filed against a magistrate judge.

Complainant filed a civil action in district court pro se and then retained counsel.

The subject judge was assigned to the matter.

Complainant alleges that the 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 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 also alleges that the judge failed to rule on one of his motions. 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, Nos. 08-90066+, slip op. 6147, 6150 (9th Cir. Jud. Council May 27,

2009). Neither of these is present here. Indeed, the docket reveals that the judge ruled on the motion shortly after this misconduct complaint was filed. This claim is dismissed because the conduct alleged is not prejudicial to the effective and expeditious administration of the business of the courts.

Complainant further alleges that the judge harassed him and favored the defendant. Complainant hasn't provided any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) to support these allegations, and adverse rulings do not constitute evidence of bias or hostility. 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).

To the extent complainant raises allegations against his counsel, these charges must be dismissed because this misconduct complaint procedure applies only to federal judges. See Judicial-Conduct Rule 4.

DISMISSED.