

MAY 20 2009

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

JUDICIAL COUNCIL  
OF THE NINTH CIRCUIT

IN RE COMPLAINT OF  
JUDICIAL MISCONDUCT

No. 08-90104

ORDER

**KOZINSKI**, Chief Judge:

A misconduct complaint has been filed against a district judge. Complainant, a pro se litigant, was a defendant in a civil case. 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 decisions 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 speculates that the judge routinely delayed ruling on motions and prolonged the case to pad his docket for financial gain. 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 provides no evidence of improper motive or habitual delay here.

Complainant further alleges that the judge conspired with plaintiff's counsel and engaged in an improper ex parte action. But complainant hasn't provided any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) to support these allegations. 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 recently supplemented his misconduct complaint with a "petition for writ of mandamus" requesting reversal of all "wrongful acts, denials of due process, and judgements" by the subject judge. This request is not cognizable under the misconduct complaint procedure; appellate review, not disciplinary proceedings, is the proper means of correcting alleged judicial mistakes. See Judicial-Conduct Rule 3(h); In re Charge of Judicial Misconduct, 685 F.2d at 1227.

**DISMISSED.**