

JUL 06 2009

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

IN RE COMPLAINT OF JUDICIAL MISCONDUCT

No. 08-90155

ORDER**KOZINSKI**, Chief Judge:

A misconduct complaint has been filed against a district judge.

Complainant, a pro se litigant, filed a civil action in district court. The matter was assigned to the subject judge.

Complainant alleges that the judge improperly designated him a vexatious litigant. Complainant further alleges that the judge refused to delay the proceeding so that his psychiatrist could attend. 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 (a man) also alleges that the judge (a woman) was biased against him because he told her that he had problems with female authority figures.

He claims that the judge responded by saying he was "100 years too late" and by refusing to let him approach the bench. Complainant doesn't provide any

objectively verifiable proof of these statements (like a transcript or names of witnesses) or the date of the hearing where this incident allegedly took place. Even if the events unfolded as complainant describes, the judge's behavior did not amount to misconduct. She responded fairly and appropriately to complainant's provocative statement. Nor does the judge's alleged refusal to let complainant approach the bench demonstrate bias or hostility; judges have very broad discretion in controlling the movement of courtroom participants, which includes requiring them to maintain a safe and respectful distance. Because complainant has provided no proof of misconduct, these charges must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

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

DISMISSED.