

JUL 15 2009

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 08-90186

ORDER

KOZINSKI, Chief Judge:

A misconduct complaint has been filed against a district judge. Complainant, a pro se prisoner, filed a habeas petition in district court. The subject judge was assigned to the matter.

Alleging that the judge engaged in an improper ex parte communication with a state court judge, complainant points to the transcript of a hearing with the subject judge as evidence, but the docket records no hearings on or about the date he alleges. Because complainant hasn't included any objectively verifiable proof (such as an identifiable transcript), there is no evidence that misconduct occurred and this charge must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant also alleges that the judge improperly denied his requests for increased law library access and the appointment of counsel. 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); In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

DISMISSED.