

SEP 11 2009

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

JUDICIAL COUNCIL
OF THE NINTH CIRCUIT

IN RE COMPLAINT OF
JUDICIAL MISCONDUCT

No. 08-90216

ORDER

KOZINSKI, Chief Judge:

A misconduct complaint has been filed against a magistrate judge.

Complainant, a pro se prisoner, filed a habeas petition in district court. The matter was referred to the subject judge.

Complainant alleges that the judge improperly transferred his habeas petition to another district. This charge relates directly to the merits of the judge's decision and must therefore be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B).

Complainant also alleges that the judge is biased against him and transferred his petition in order to delay its resolution. But complainant hasn't provided any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) to support this allegation. See In re Complaint of Judicial Misconduct, 569 F.3d 1093 (9th Cir. Jud. Council 2009). Because there's 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).

Complainant's request that the judge be recused must be made in that case and is not the proper subject of a misconduct proceeding. See Judicial-Conduct Rule 3(h)(3)(A).

Complainant previously filed a misconduct complaint against the same judge making similar allegations of bias and also seeking to challenge the merits of the judge's rulings. In re Complaint of Judicial Misconduct, No. 08-89034 (9th Cir. Jud. Council 2008). Complainant is therefore cautioned that "[a] complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints." Judicial-Conduct Rule 10(a); see also In re Complaint of Judicial Misconduct, 552 F.3d 1146, 1148 (9th Cir. Jud. Council 2009).

DISMISSED.