

MAY 11 2010

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 09-90120

ORDER

KOZINSKI, Chief Judge:

Complainant alleges that the district judge assigned to his criminal case improperly denied his motion to continue his trial. This charge relates directly to the merits of the judge's ruling 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).

Complainant also alleges that the judge was biased against him.

Complainant supports these charges by pointing to a hearing transcript, but none of the statements on which complainant relies evince bias or favoritism. The judge was thorough, effective and unfailingly polite. Adverse rulings alone do not constitute proof of bias and complainant hasn't provided any other objectively verifiable proof to support these allegations. Complainant also complains about the fact that the judge did not ask him any questions during the hearing, even though he was available by telephone. But complainant was ably represented by

counsel and it is not customary for a court to address a represented criminal defendant directly. Because there is no evidence that misconduct occurred, the charges must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D); In re Complaint of Judicial Misconduct, 569 F.3d 1093, 1093 (9th Cir. Jud. Council 2009).

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

DISMISSED.