

OCT 14 2009

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 09-90004

ORDER

KOZINSKI, Chief Judge:

Complainant alleges that the judge assigned to his civil case misquoted a defense exhibit to support an improper denial of summary judgment. 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). This conclusion is not altered by complainant’s characterization of the judge’s conduct as “fraud.” If the judge omitted some crucial language from the quotation, the error would be readily apparent on appeal, where it could be corrected.

Complaint also accuses the judge of improperly delegating to court staff the authority to issue orders in the judge’s name. The only evidence complainant provides to support this allegation is that the signatures on various orders are identical. He hypothesizes that court staff must have been

photocopying the judge's signature and affixing it to unauthorized orders. Complainant apparently is not familiar with electronic signatures which do, in fact, create identical images for use at the judge's direction. This claim is dismissed as there is no evidence that misconduct occurred. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Insofar as complainant is complaining about court staff, the charge must be dismissed because the misconduct proceedings apply only to judges. See Judicial-Conduct Rule 4; In re Complaint of Judicial Misconduct, 569 F.3d 1093, 1093 (9th Cir. Judicial Council 2009). Any concerns complainant may have about the conduct of clerk's office staff may be brought to the attention of the Clerk of Court.

DISMISSED.