

DEC 22 2010

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

IN RE COMPLAINT OF JUDICIAL MISCONDUCT

No. 10-90055

ORDER**KOZINSKI**, Chief Judge:

A pro se prisoner alleges that a district judge was biased and should have recused himself from considering his habeas petition. Because the judge reassigned complainant's habeas case to another judge before making any substantive ruling, this charge must be dismissed as unfounded. See Judicial-Conduct Rule 11(c)(1)(D).

Complainant further alleges that the judge unduly delayed review of his habeas petition. Delay is not cognizable misconduct "unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases." Judicial-Conduct Rule 3(h)(3)(B). Since complainant doesn't allege habitual delay, and provides no evidence of improper motive, this charge must also be dismissed. See *In re Complaint of Judicial Misconduct*, 567 F.3d 429, 431 (9th Cir. 2009).

DISMISSED.