

JAN 07 2011

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

IN RE COMPLAINT OF JUDICIAL MISCONDUCT

No. 10-90081

ORDER**KOZINSKI**, Chief Judge:

A pro se prisoner alleges that a district judge made various improper rulings in his civil rights case. This allegation relates 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).

Complainant also alleges that the judge was "intimidated" by the defendants but presents no proof of this, other than the fact that the judge ruled against him. It is well established that adverse rulings aren't proof that the judge acted from an improper motive. See In re Complaint of Judicial Misconduct, 583 F.3d 598, 598 (9th Cir. 2009). This charge must be dismissed because complainant hasn't provided any proof to support his allegations. 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. 2009).

Complainant further alleges that the subject judge improperly delayed ruling

on complainant's motions but promptly ruled on all motions filed by defendants. But delay is not cognizable "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); In re Complaint of Judicial Misconduct, 567 F.3d 429, 431 (9th Cir. 2009). Complainant hasn't provided any evidence that the alleged delay was habitual or improperly motivated. Indeed, the docket reveals that the judge ruled on complainant's motions within a reasonable amount of time. Because there is no evidence that misconduct occurred, these charges must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

To the extent complainant makes allegations against prison officials and the prison guards' union, they are dismissed because the misconduct complaint procedure applies only to federal judges. See Judicial-Conduct Rule 4.

Complainant has filed three previous misconduct complaints that were dismissed because the allegations were conclusory and merits-related. 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 In re Complaint of Judicial Misconduct, 552 F.3d 1146, 1148 (9th Cir. Jud. Council 2009). Complainant is advised that should he file any further misconduct complaints that present

essentially the same allegations, the complaint will be summarily dismissed as frivolous and he may be subject to an order barring him from filing further complaints.

DISMISSED.