

JAN 11 2011

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

IN RE COMPLAINT OF JUDICIAL MISCONDUCT

No. 10-90109

ORDER**KOZINSKI**, Chief Judge:

A pro se prisoner alleges that a district judge committed substantive and procedural errors during his criminal trial. These charges must be dismissed as relating directly to the merits of the judge's rulings. 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 for declining to cooperate with law enforcement. But complainant has provided no objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) to support these allegations. See In re Complaint of Judicial Misconduct, 569 F.3d 1093, 1093 (9th Cir. 2009). Adverse rulings do not prove bias. See In re Complaint of Judicial Misconduct, 583 F.3d 598, 598 (9th Cir. 2009). His offer to produce “necessary documentation . . . to support and substantiate [his] claim,” is not itself evidence, and doesn't explain how these

documents would prove his case. 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).

Complainant further alleges the judge improperly delayed his criminal trial, “grant[ing] the prosecutor seven continuances, while also granting [his] court appointed defense attorney ten continuances for trial.” Delay isn’t 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). Because complainant doesn’t charge habitual delay, and provides no evidence of improper motive, this charge must be dismissed. See In re Complaint of Judicial Misconduct, 567 F.3d 429, 431 (9th Cir. 2009).

To the extent that complainant makes allegations against the prosecutor, they are dismissed because the misconduct complaint procedure applies only to federal judges. See Judicial-Conduct Rule 4.

DISMISSED.