

APR 27 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS**trdJUDICIAL COUNCIL
OF THE NINTH CIRCUIT****IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 10-90136

ORDER**KOZINSKI**, Chief Judge:

A pro se prisoner alleges that a district judge caused “the loss of witnesses and evidence” in his habeas case by granting multiple extensions of time to file a response to the petition and engaging in other “dilatory tactics.” But delay in a single case isn’t cognizable misconduct “unless the allegation concerns an improper motive.” Judicial-Conduct Rule 3(h)(3)(B); see In re Complaint of Judicial Misconduct, 567 F.3d 429, 431 (9th Cir. Jud. Council 2009).

Complainant’s claim that the judge intentionally prolonged the case because of “possible political ramifications” is wholly unsupported. The judge’s order denying complainant’s habeas petition details the case’s convoluted procedural history, which involved over twenty claims and additional litigation in state court. Because complainant hasn’t provided any evidence of improper motive, 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 that the appellate court “declined to address” his

emergency mandamus petition. But the Judicial Council evaluates misconduct complaints against judges, not courts, and complainant hasn't named the circuit judge or judges who allegedly committed misconduct. See 28 U.S.C. § 351(a). This charge must also be dismissed. See id. § 352(b)(1)(A)(i).

To the extent complainant alleges that respondents in his habeas case caused improper delay, the charge is dismissed because the misconduct proceeding applies only to federal judges. See Judicial-Conduct Rule 4.

DISMISSED.