

JUN 16 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALSJUDICIAL COUNCIL
OF THE NINTH CIRCUITIN RE COMPLAINT OF
JUDICIAL MISCONDUCT

No. 10-90137

ORDER

KOZINSKI, Chief Judge:

Complainant, a pro se prisoner, alleges that a district judge was racially biased against him and made prejudicial remarks in front of the jury during his criminal trial. Complainant tries to offer support of his allegation by reporting that his attorney advised him to file a misconduct complaint, but the attorney's imputed opinion isn't evidence. Complainant doesn't specify when the alleged racially biased remarks occurred during his four-day trial, saying only that the remarks were made when the trial "was to begin." A review of the transcript of jury selection and opening statements discloses no racially biased remarks or hostility. Because there is no evidence of misconduct, these charges must be dismissed. 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. Jud. Council 2009).

Complainant also claims that the judge had "improper discussions" with the prosecutors, but provides no objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) to support this allegation. So it must

also be dismissed for lack of evidence. 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 at 1093.

DISMISSED.