

FILED

MAY 17 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 11-90049

ORDER

KOZINSKI, Chief Judge:

Complainant alleges that a district judge refused to rule on a motion in his civil case. The subject judge has since recused and a different judge has ruled on the motion. Any delay in ruling on the motion isn't cognizable misconduct because complainant doesn't allege that such delay was habitual or improperly motivated. See Judicial-Conduct Rule 3(h)(3)(B). This charge must therefore be dismissed. See In re Complaint of Judicial Misconduct, 567 F.3d 429, 431 (9th Cir. Jud. Council 2009).

DISMISSED.