

JUN 30 2011

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 11-90063

ORDER

KOZINSKI, Chief Judge:

A pro se prisoner alleges that a magistrate judge wrongly denied his requests for counsel, discovery and A.D.A. accommodations, and also improperly granted defendants' motion. These charges must be dismissed because they relate directly to the merits. 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). Insofar as complainant alleges that the judge erred in denying a motion to recuse, this charge must also be dismissed as merits-related. See In re Complaint of Judicial Misconduct, 579 F.3d 1062, 1064 (9th Cir. Jud. Council 2009).

Complainant alleges that the judge has “refused to enforce and abide by the A.D.A., the United States Constitution, the federal rules, and the case law of this circuit and of the United States Supreme Court.” To avoid the merits-related bar, a complainant must at least allege that the rulings in question have been reversed on appeal. The Judicial Council can only determine whether a series of rulings that have been found erroneous by a higher authority constitutes a willful pattern and

practice of disregarding established legal norms. See In re Complaint of Judicial Misconduct, 631 F.3d 961, 962 (9th Cir. Judicial Council 2011). Because complainant has not pointed to a single decision reversed on appeal, this charge must be dismissed.

Complainant also alleges that the judge let his requests “sit dead in the water for several months” (internal quotation marks removed), but quickly granted requests filed by defendants. But 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 neither exists in this case, the delay charge must be dismissed. See In re Complaint of Judicial Misconduct, 567 F.3d 429, 431 (9th Cir. Judicial Council 2009).

Complainant further alleges that the judge favored the defendants by granting their request for additional time “without even allowing the plaintiff the opportunity to oppose.” But adverse rulings don’t prove bias. Because complainant offers no other evidence to support his bias claim, this charge must be dismissed. See In re Complaint of Judicial Misconduct, 631 F.3d 961 at 963 (9th Cir. Jud. Council 2011); 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.