

JUL 11 2012

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

IN RE COMPLAINT OF JUDICIAL MISCONDUCT

Nos. 12-90022 and 12-90023

ORDER**KOZINSKI**, Chief Judge:

Complainant, a pro se prisoner, accuses a district judge and a magistrate judge of covering up a government conspiracy to frame him. The complainant also accuses the judges of racial bias. However, the complainant provides no objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) to support allegations of conspiracy or bias. See In re Complaint of Judicial Misconduct, 569 F.3d 1093, 1093 (9th Cir. 2009). Adverse rulings are not proof of conspiracy or bias. See In re Complaint of Judicial Misconduct, 583 F.3d 598, 598 (9th Cir. 2009). Without other evidence, these charges must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant claims the magistrate judge incorrectly told him during a status conference that he had no right to effective assistance of counsel. But the transcript shows the judge actually told the complainant he couldn't raise an ineffective assistance claim at that stage in the case. This comment did not

prejudice “the effective and expeditious administration of the business of the courts” so this claim is dismissed. See Judicial-Conduct Rule 11(c)(1)(A).

Complainant further alleges the judges failed to rule on a pro se version of his habeas petition. However, the record shows the court ruled on this petition. This charge is dismissed as “conclusively refuted by objective evidence.” 28 U.S.C. § 352(b)(1)(B).

Complainant also claims the judges intentionally delayed an evidentiary hearing in order to exhaust his resources and procedurally bar his claims. But complainant and the government both requested rescheduling of the hearing, and delay is not 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 provides evidence of neither, the delay charge is dismissed. See In re Complaint of Judicial Misconduct, 567 F.3d 429, 431 (9th Cir. 2009).

Finally, complainant’s various allegations against prosecutors and defense attorneys are dismissed because these misconduct proceedings cover only federal judges. See Judicial-Conduct Rule 4.

DISMISSED.