

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

FILED

FEB 18 2015

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

<p>IN RE COMPLAINT OF</p> <p>JUDICIAL MISCONDUCT</p>
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No. 14-90108

ORDER

THOMAS, Chief Judge:

A pro se litigant alleges that a district judge held a case management conference in her case with only opposing counsel present. In support of this claim, complainant points to an order which contains the phrase “as the Court discussed during the Conference with counsel.” As the district judge explained in an order denying complainant’s motion to disqualify on the same basis, no such conference was held, and the language noted was standard form language that should have been deleted because it was inapplicable. This allegation that the judge had improper ex parte communications must be dismissed because complainant has presented no facts supporting it. See 28 U.S.C.

§ 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant also alleges that the judge has delayed complainant’s case in various ways, including by failing to schedule a settlement conference or a trial date. Delay is not cognizable misconduct “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); see In re Complaint of Judicial Misconduct, 567 F.3d 429, 431 (9th Cir. 2009).

Complainant has not provided any objective evidence that the alleged delay was habitual or improperly motivated. Because there is no evidence of misconduct, this charge must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.