

FILED

JAN 19 2016

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 16-90016

ORDER

THOMAS, Chief Judge:

Complainant, a pro se prisoner, alleges that a district judge has failed to rule on his motions regarding service and discovery. However, failure to rule, like delay in ruling, is not misconduct unless it is habitual or improperly motivated. See Judicial-Conduct Rule 3(h)(3)(B); In re Complaint of Judicial Misconduct, 584 F.3d 1230, 1231 (9th Cir. Jud. Council 2009). Because complainant fails to show any improper motive or habitual delay in a significant number of unrelated cases, this charge must be dismissed for failure to allege conduct prejudicial to the effective and expeditious administration of the business of the courts. See 28 U.S.C. § 351(a); Judicial-Conduct Rule 11(c)(1)(A).

Complainant further alleges that the judge is biased against him, favors the opposing party, and improperly disclosed the fact that complainant filed a previous misconduct complaint. Adverse rulings alone are not proof of bias, and complainant provides no objectively verifiable evidence to support these

allegations, which must be dismissed as unfounded. See 28 U.S.C.

§ 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 583 F.3d 598 (9th Cir. Jud. Council 2009); Judicial-Conduct Rule 11(c)(1)(D).

To the extent complainant raises allegations against prison staff or U.S. Marshals, such allegations are dismissed because this misconduct complaint procedure applies only to federal judges. See In re Complaint of Judicial Misconduct, 632 F.3d 1287, 1288 (9th Cir. Jud. Council 2011); Judicial-Conduct Rule 4.

Complainant has now filed two misconduct complaints against the same subject judge, raising similar, unsupported allegations of bias and misconduct. Complainant is cautioned that a “complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints.” Judicial-Conduct Rule 10(a); see also In re Complaint of Judicial Misconduct, 552 F.3d 1146, 1148 (9th Cir. Jud. Council 2009).

DISMISSED.