

FILED

MAR 2 2017

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 16-90135

ORDER

THOMAS, Chief Judge:

Complainant, a pro se prisoner, alleges that the magistrate judge referred to his habeas petition should have recused from the case. Complainant offers no evidence that the judge failed to recuse for an improper purpose, so this charge must be dismissed as merits-related. See 28 U.S.C. § 352(b)(1)(A)(ii); In re Complaint of Judicial Misconduct, 647 F.3d 1181 (9th Cir. Jud. Council 2011); Judicial-Conduct Rule 11(c)(1)(B).

Complainant also alleges that review of his petition has been delayed. A review of the docket shows that respondent's motion to dismiss complainant's petition as untimely was fully briefed about six months ago, and that the magistrate judge recently filed a recommendation to grant respondent's motion and to dismiss the case. Complainant fails to show any improper delay, that any alleged delay was based on an improper motive, or that the judge has habitually delayed ruling in a significant number of unrelated cases. Accordingly, this

charge must be dismissed. See Judicial-Conduct Rule 3(h)(3)(B); In re Complaint of Judicial Misconduct, 584 F.3d 1230, 1231 (9th Cir. Jud. Council 2009).

DISMISSED.