

DEC 22 2009

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

JUDICIAL COUNCIL
OF THE NINTH CIRCUIT

IN RE COMPLAINT OF
JUDICIAL MISCONDUCT

No. 09-90049

ORDER

KOZINSKI, Chief Judge:

Complainant, a pro se prisoner, alleges that the district judge assigned to his civil case made various improper substantive and procedural rulings. These charges relate directly to the merits of the judge’s rulings and must therefore be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B). A misconduct complaint is not a proper vehicle to challenge a judge’s rulings on the merits. See In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

Complainant also alleges that the judge was biased against him because he is a prisoner, and that the judge may have had a conflict of interest due to a financial stake in prisons. Complainant hasn’t provided any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) to support these allegations. See In re Complaint of Judicial Misconduct, 569 F.3d 1093, 1093 (9th Cir. Jud. Council 2009). Adverse rulings do not constitute proof of bias. Because

there is no evidence that misconduct occurred, these charges must be dismissed.

See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant claims that the fact that the judge sometimes sits on the Ninth Circuit by designation creates an impermissible risk of bias. But sitting on a higher court by designation is not misconduct; it is entirely proper. This charge must therefore be dismissed for failure to allege conduct prejudicial to the effective and expeditious administration of the business of the courts. 28 U.S.C. § 351(a); Judicial-Conduct Rule 11(c)(1)(A).

DISMISSED.