

MAY 03 2012

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

IN RE COMPLAINT OF JUDICIAL MISCONDUCT

No. 11-90124

ORDER

KOZINSKI, Chief Judge:

Complainant alleges that a magistrate judge should have recused from her civil case. Allegations that a judge erred in failing to recuse are generally dismissed as merits-related. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B); In re Complaint of Judicial Misconduct, 579 F.3d 1062, 1064 (9th Cir. Jud. Council 2009). “A failure to recuse may constitute misconduct only if the judge failed to recuse for an improper purpose.” In re Complaint of Judicial Misconduct, 605 F.3d 1060, 1062 (9th Cir. Jud. Council 2010). There is no evidence that happened here.

Complainant suspects that the judge engaged in ex parte communications and disclosed complainant’s personal information to defense counsel. Complainant believes that the judge “negotiated [and] encouraged [an] unethical settlement,” but she provides no objectively verifiable proof to support this allegation. This charge must be dismissed for lack of evidence. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-

Conduct Rule 11(c)(1)(D); In re Complaint of Judicial Misconduct, 569 F.3d 1093, 1093 (9th Cir. Jud. Council 2009).

Complainant further alleges that the magistrate judge was biased against her and exhibited favoritism toward defense counsel. But complainant has presented no evidence other than adverse rulings to support her allegations, so these charges must also be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D); In re Complaint of Judicial Misconduct, 583 F.3d 598, 598 (9th Cir. Jud. Council 2009).

Complainant alleges that the judge “intimidated [her] with threats to [her] law license” because the judge asked where she was licensed to practice law. Complainant is not licensed in the state where the court is located, so it is not unusual for the judge to inquire about the status of her law license elsewhere. Complainant further alleges that the judge “was abusive to her” because the judge heard other matters on her calendar before dealing with complainant’s case, despite knowing the complainant is disabled. Judges have discretion to proceed with their court calendar as they see fit, and complainant provides no evidence that the judge intended to make her uncomfortable. Because complainant does not allege conduct “prejudicial to the effective and expeditious administration of the business of the courts,” her charges must be dismissed. See Judicial-Conduct Rule 11(c)(1)(A).

DISMISSED.