

OCT 30 2012

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

IN RE COMPLAINT OF JUDICIAL MISCONDUCT

No. 12-90052

ORDER**KOZINSKI**, Chief Judge:

Complainant alleges that a district judge sent at least four armed guards to his house to inquire about a website that contained derogatory information about the judge. Complainant says the judge's purpose was to "intimidate" him, but complainant has produced no proof that the judge had anything to do with the incident. This allegation must therefore be dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant also alleges the judge should have recused himself from complainant's civil case after he sent the guards. Allegations that a judge erred in failing to recuse are merits-related and must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); In re Complaint of Judicial Misconduct, 579 F.3d 1062, 1064 (9th Cir. 2009); Judicial-Conduct Rule 11(c)(1)(B). An allegation that a judge presided in a case knowing that he was subject to a conflict of interest may present a viable claim of judicial misconduct. See Implementation of the Judicial Conduct

and Disability Act of 1980: A Report to the Chief Justice 146 (2006). But to state such a claim, a complainant must provide proof that the judge was aware of a conflict or was acting with a corrupt motive. Complainant has produced no evidence of a corrupt motive or even that recusal was appropriate. Accordingly, this claim is dismissed for lack of objectively verifiable proof. 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.