

DEC 24 2012

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

IN RE COMPLAINT OF JUDICIAL MISCONDUCT

No. 12-90095

ORDER**KOZINSKI**, Chief Judge:

Complainant alleges that a district judge should have recused himself from her civil case. Generally, 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). To state such a claim, complainant must establish that the judge was aware of a conflict and was acting for illicit reasons. Id. Since the evidence complainant presents doesn't demonstrate either conjunct, the allegations are dismissed for lack of objectively verifiable proof. 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.