

FILED

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 13-90061

ORDER

KOZINSKI, Chief Judge:

Complainant alleges that a district judge committed misconduct by presiding over cases involving companies in which he owned stock. While an allegation that a judge presided over a case knowing he was subject to a conflict of interest may present a viable claim of judicial misconduct, complainant hasn't provided any evidence that the judge was aware of the alleged conflict when he made the rulings in question or that he otherwise acted with a corrupt motive. See 28 U.S.C. § 455(b)(4); In re Complaint of Judicial Misconduct, 756 F.3d 1143, 1144 (9th Cir. Jud. Council 2014), aff'd, No. 12-90162, Slip op. at *2 (9th Cir. Jud. Council Sept. 26, 2014). Instead, complainant simply asserts that the judge is a “sophisticated investor” who “would . . . be aware” of the relationships between the companies in which he owns shares and the entities involved in the cases before him. But complainant's speculation as to the judge's knowledge doesn't constitute the type of objectively verifiable proof required for a finding of

misconduct. In re Complaint of Judicial Misconduct, 583 F.3d 598, 598 (9th Cir. Jud. Council 2010). Complainant relies exclusively on the rulings the subject judge rendered in favor of the entities he has an alleged financial interest in, but adverse rulings alone do not constitute proof of bias. Id.

Moreover, even if complainant were able to show that the judge had knowledge of the relevant corporate relationships, complainant has not alleged, much less offered any proof, that the judge's interests were substantially affected (or affected at all) by the outcome of the proceedings. See In re Complaint of Judicial Misconduct, 756 F.3d at 1144. As a result, complainant fails to provide sufficient evidence to raise an inference that misconduct has occurred. 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 also claims that the judge's mortgage-backed securities investments created conflicts of interest. However, again, there is no indication that the judge had knowledge that the outcome of the cases he presided over could affect his financial interests, nor is there any indication that the results in those cases did, in fact, benefit the judge financially. See In re Complaint of Judicial Misconduct, 756 F.3d at 1144; see also 28 U.S.C. § 455(d)(4)(i); Comm. on Codes of Conduct, Advisory Opinion No. 57 (2009). These allegations must therefore be

dismissed as baseless. See Judicial-Conduct Rule 11(c)(1)(D).

Complainant next claims that the judge had a financial conflict of interest when he presided over cases involving users of the Mortgage Electronic Registration System (MERS). Complainant's theory appears to be that, because the judge made investments in companies whose senior officials are board members of MERSCORP—the company that owns and operates MERS—the judge should have sua sponte recused himself from all cases involving any MERS user. The attenuated connection between the judge and MERS users provides no basis to believe the judge would stand to gain from ruling in the users' favor. There is thus insufficient evidence from which to even infer a conflict of interest. See Judicial-Conduct Rule 11(c)(1)(D).

Finally, complainant accuses the subject judge of filing “[c]onfusing and [i]nadequate” financial disclosure statements. While, under Judicial-Conduct Rule 3(h)(1)(G), violating financial disclosure requirements may be cognizable misconduct, that is so only “if the judge knowingly files false reports or repeatedly files erroneous reports,” thereby “casting doubt on the judge’s good faith in making the disclosures.” See In re Complaint of Judicial Misconduct, 756 F.3d at 1143–44; see also 28 U.S.C. § 455(b)(4). Complainant provides no evidence that the judge repeatedly filed erroneous reports or committed a knowing falsehood.

These claims are therefore dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.