

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**

Nos. 14-90159, 14-90160,
14-90161 and 14-90162

ORDER

THOMAS, Chief Judge:

Three pro se litigants filed concerted complaints of judicial misconduct; two complainants named a district judge who was assigned to their related civil cases, and the third complainant named that judge and another district judge who dismissed his unrelated civil case. Because two complainants filed appeals raising many of the same allegations against one of the subject judges, the complaints were held in abeyance until the appellate proceedings concluded. *See* Commentary to Judicial-Conduct Rule 3. The Court of Appeals recently affirmed the judge's decisions in full, found no abuse of discretion, and rejected contentions that the judge was biased or engaged in judicial misconduct.

Complainants allege that the judges made improper rulings and should have recused from their cases. These charges relate directly to the merits of the judges' rulings and are therefore dismissed. *See* 28 U.S.C. § 352(b)(1)(A)(ii); *In re*

Complaint of Judicial Misconduct, 647 F.3d 1181 (9th Cir. Jud. Council 2011) (holding that the decision not to recuse, absent evidence of an improper motive, is merits-related); *In re Charge of Judicial Misconduct*, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982); Judicial-Conduct Rule 11(c)(1)(B).

Complainants further allege that both judges committed misconduct by presiding over cases involving companies in which they owned stock. In support of these claims, they point to the judges' financial disclosure statements and highlight mutual funds that allegedly hold securities in the defendant companies. Canon 3C(1)(c) requires a judge to disqualify himself or herself when the judge knows that he or she "has a financial interest in the subject matter in controversy or in a party to the proceeding," or when the judge has "any other interest that could be affected substantially by the outcome of the proceeding." However, "ownership in a mutual or common investment fund that holds securities is not a 'financial interest' in such securities unless the judge participates in the management of the fund." 28 U.S.C. § 455(d)(4)(i); Canon 3C(3)(c)(i); *see also* Comm. on Codes of Conduct, Advisory Opinion No. 57 (2009) and Advisory Opinion No. 106 (2011). As such, the judges' mutual fund investments here do not convey an ownership interest to the judges in the companies whose stock the fund holds. There is no evidence that the judges controlled the management of the

mutual funds, or that the outcome of the proceedings substantially affected (or affected at all) the value of the interests. Simply put, the judges did not have an equity interest in the companies appearing before them and therefore had no conflict of interest. Therefore, these allegations are dismissed as baseless. *See* Judicial-Conduct Rule 11(c)(1)(D).

Complainants allege that one of the judges has failed to submit financial disclosure statements because only a 2012 report was found on the *Judicial Watch* website—a private, non-government website not affiliated with the federal judiciary. Federal district judges are not required to file financial disclosure reports to private entities. Pursuant to statute, federal district judges file the required financial disclosure reports annually with the Judicial Conference of the United States Committee on Financial Disclosure. 5 U.S.C. app. §§ 101 *et seq.* There is no evidence that the judge has not complied with those requirements, and this allegation is dismissed as unfounded. Judicial-Conduct Rule 11(c)(1)(D).

Next, complainants allege that one of the judges had improper *ex parte* communications with defense counsel. Complainants offer no proof of these communications, nor do they specify when they occurred or what was discussed. Without more, this claim is too speculative to “raise an inference that misconduct has occurred.” 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(d)(1)(D).

Complainants also allege that one of the judges was anti-semitic and biased against pro se and disabled litigants. A similar allegation was raised on appeal and rejected by the appellate court. Adverse rulings are not evidence of bias, *In re Complaint of Judicial Misconduct*, 631 F.3d 961, 963 (9th Cir. Jud. Council 2011), and complainants provide no other evidence to support these allegations, which must be dismissed as unsupported. 28 U.S.C. § 352(b)(1)(A)(iii); *In re Complaint of Judicial Misconduct*, 569 F.3d 1093 (9th Cir. Jud. Council 2009); Judicial-Conduct Rule 11(c)(1)(D).

Complainants further allege that the judges improperly delayed rulings in the cases. A review of the records indicates that the cases proceeded in due course. Further, complainants offer no evidence that the alleged delay is based on improper motive, or that either judge habitually delayed ruling in a significant number of unrelated cases. Accordingly, these allegations must be dismissed. *In re Complaint of Judicial Misconduct*, 584 F.3d 1230, 1231 (9th Cir. Jud. Council 2009); Judicial-Conduct Rule 3(h)(3)(B).

Complainants allege that one of the judges lacks judicial temperament and showed disrespect for them as well as litigants and attorneys in another matter to which they are not parties. Judges are given wide latitude to express their views—even strong views—as to the merits of a case. *Implementation of the*

Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice, 64 (2006). Complainants have not presented any evidence that the judge's particular comments or any other behavior rises to the level of judicial misconduct. Because there is no evidence that misconduct occurred, this claim must be dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.