

FILED

AUG 16 2016

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 14-90163 and 14-90164

ORDER

THOMAS, Chief Judge:

A pro se litigant alleges that two district judges made improper rulings and should have recused from his civil case. 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).

Complainant alleges that both judges had a conflict of interest because they allegedly held stock in the defendant company. Complainant attaches the judges' financial disclosure statements and highlights mutual funds listed by the judges that allegedly hold securities in the defendant company. According to one financial disclosure statement, one of the judges appears to have inherited stock in the defendant company before he divested it in 2004, which was ten years before

complainant's case was assigned to him. 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 to the judges an ownership interest 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. Because neither judge had a conflict of interest, these allegations are dismissed as baseless. *See* Judicial-Conduct Rule 11(c)(1)(D).

Complainant also alleges that one of the subject judges was biased against him as a disabled litigant. Adverse rulings are not evidence of bias, *In re Complaint of Judicial Misconduct*, 631 F.3d 961, 963 (9th Cir. Jud. Council 2011), and complainant provides no other evidence to support this allegation,

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).

Complainant also alleges that one of the subject judges failed to supervise adequately the other judge assigned to complainant's case. But the judge had no duty to oversee the rulings of other judges. This charge must be dismissed because the charged behavior does not amount to "conduct prejudicial to the effective and expeditious administration of the business of the courts." *See* 28 U.S.C. § 351(a); Judicial-Conduct Rule 11(c)(1)(A).

DISMISSED.