

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

FILED

SEP 29 2015

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

<p>IN RE COMPLAINT OF JUDICIAL MISCONDUCT</p>
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No. 15-90095

ORDER

THOMAS, Chief Judge:

A pro se litigant alleges that a magistrate judge made improper rulings in his civil case and should have recused. Any disagreement complainant has with the judge's rulings is merits-related and not cognizable in a misconduct proceeding. See 28 U.S.C. § 352(b)(1)(A)(ii); In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982); Judicial-Conduct Rule 11(c)(1)(B). Further, allegations that a judge erred in failing to recuse are merits-related and must be dismissed. See In re Complaint of Judicial Misconduct, 570 F.3d 1144 (9th Cir. Jud. Council 2009). 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. But to state such a claim, a complainant must provide convincing proof that the judge was aware of the conflict or was acting with a corrupt motive. See In re Complaint of Judicial Misconduct, 647 F.3d 1181 (9th Cir. Jud. Council 2011). The evidence presented in this case is insufficient to make such a showing, and 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).

Complainant seems to allege that the judge acted “as a lawyer” for defendants, and may have conspired with defense counsel to withhold discovery. Adverse rulings are not proof of bias or conspiracy. See In re Complaint of Judicial Misconduct, 583 F.3d 598 (9th Cir. Jud. Council 2009). Further, complainant provides no objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) to support these allegations. See In re Complaint of Judicial Misconduct, 569 F.3d 1093 (9th Cir. Jud. Council 2009). Without such evidence, these charges must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant further alleges that the judge “ordered ex parte communication” but fails to provide any specific facts upon which this claim is based. Because complainant provides no evidence of misconduct, this allegation is dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.