

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. 07-89100

MEMORANDUM AND ORDER

KOZINSKI, Chief Judge:

A complaint of misconduct has been filed against a district judge of this circuit. Complainant alleges that he attempted to purchase a house from the subject judge, but the sale fell through. He filed a lawsuit in state court to recover his deposit from the title company. After this lawsuit was consolidated with another, the judge became a defendant. On appeal, the state court ordered that the money be released to the subject judge.

Complainant alleges that the judge received the deposit money from the title company in secret “obviously by using his stature.” Many of complainant’s specific allegations are vague: He may be alleging that the judge used his position to influence the state court proceedings and that the judge improperly used his chambers staff for secretarial services related to the lawsuit. Complainant hasn’t included any objectively verifiable proof (for example, names of witnesses, documents, recordings or transcripts) supporting any such allegations. Because

these charges are wholly unsupported, they are dismissed. 28 U.S.C.

§ 352(b)(1)(A)(iii); Rule 4(c)(3) of the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability (Misconduct Rules).

Complainant also seems to allege that the judge acted improperly during the real estate transaction and subsequent state court lawsuit. Again, many of complainant's specific allegations are vague. The complaint states that "what happened in various courts, and how he wrote judgements [sic] is on record." He complains about "[m]ediation drama" and that the judge consolidated two independent cases so that the judge "got money although he was not a defendant in [the] money case."

Conduct occurring outside the performance of official duties may be considered in these proceedings when such misconduct might have a prejudicial effect on the administration of the business of our courts. For example, if a judge is found to have committed perjury or other litigation misconduct in a case where he appears as a party or witness, such misconduct would be the proper subject of judicial discipline. In such circumstances, however, we would normally defer to a determination by the forum court as to whether such misconduct has occurred. Where, as here, the forum court has not made a determination that the judge

committed misconduct in his capacity as litigant, we must have unusually strong proof of such misconduct before commencing disciplinary proceedings, lest we impugn the integrity and finality of the forum court judgment.

Complainant here was a party to the state court proceedings and thus had every opportunity to bring any misconduct to the attention of that court and to obtain a determination as to whether misconduct occurred. It does not appear that complainant sought such a determination, nor has he presented any facts, much less unusually strong proof, that would cause us to doubt that the subject judge acted entirely properly. The charges of misconduct are dismissed as insufficiently supported. 28 U.S.C. § 352(b)(1)(A)(iii); Misconduct Rule 4(c)(3).

Complainant's allegations that the state court judge mishandled his case are dismissed because this complaint procedure applies only to federal judges. Misconduct Rule 1(d).

DISMISSED.