

MAY 22 2009

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

**JUDICIAL COUNCIL  
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF  
JUDICIAL MISCONDUCT**

No. 08-90065

**ORDER**

**KOZINSKI**, Chief Judge:

A misconduct complaint has been filed against a district judge. Complainant was involved in a civil case to which the subject judge was assigned.

Complainant alleges that the judge was disrespectful and demonstrated hostility and bias during a hearing. A review of the hearing transcript does not reveal anything to suggest that the judge harbored bias or hostility that would prevent fair judgment in the case. Adverse rulings do not constitute evidence of bias or hostility. The judge allowed the lawyers for the parties to describe their positions, and said nothing that could reasonably be construed as showing bias for or against either side. The judge's comments were polite and businesslike, and demonstrated a full command of the issues presented at the hearing. The judge's appearance and gestures, assuming they were as described by complainant, do not rise to the level of judicial misconduct. Because there is no evidence that misconduct occurred, this charge must be dismissed. See 28 U.S.C.

§ 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant also alleges that the judge made various improper rulings. These charges relate directly to the merits of the judge's decisions and must therefore be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B). A misconduct complaint is not a proper vehicle for challenging the merits of a judge's rulings. See In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

Complainant appears to allege that the judge improperly relies on his law clerks rather than "investigat[ing] his cases on his own." But judges are not required to handle every aspect of their cases singlehandedly. It is not misconduct for a judge to seek the assistance of law clerks and other court employees; all judges do so to a greater or lesser extent. This charge is dismissed because the charged behavior does not amount to "conduct prejudicial to the effective and expeditious administration of the business of the courts." 28 U.S.C. § 351(a); Judicial-Conduct Rule 11(c)(1)(A).

**DISMISSED.**