

JAN 28 2010

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 08-90139

ORDER

KOZINSKI, Chief Judge:

Complainant alleges that a district judge engaged in ex parte communications with one party's counsel in a civil case. Complainant was not a party or counsel in that case and he admits that he has no personal knowledge of the underlying facts. His allegation is based entirely upon an appellate court's dissenting opinion. Complainant initially submitted an excerpt from this dissent, which seemed to say that the subject judge had summoned one party's counsel to a private meeting in chambers. Later, after reading a letter to the editor from one party's counsel, which explained that all parties had been represented by counsel at that meeting, complainant supplemented his complaint to acknowledge that his allegations may have no factual basis. I have reviewed the published letter and it states that all parties were represented. Because the dissent does not suggest that the meeting was otherwise improper, and because complainant provides no other evidence of misconduct, 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, on the basis of the dissenting opinion, that the subject judge improperly sealed the case file. This claim relates directly to the merits of the judge's rulings and must therefore be dismissed. See 28 U.S.C.

§ 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B).

Finally, complainant alleges that the judge should have recused due to a “personal interest” in the action. But allegations that call into question the correctness of a judge's ruling, normally including failure to recuse, are merits-related and must therefore be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rules 3(h)(3)(A) and 11(c)(1)(B). Complainant does not set forth any facts about the judge's alleged “personal interest” in the action, much less anything that would raise an inference of misconduct. Judicial-Conduct Rule 6(b) requires complainants to detail the specific facts on which a claim of misconduct is based and provide enough information to justify an investigation. It is clear that complainant has no such information to offer.

DISMISSED.