

DEC 23 2009

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 08-90246 and 08-90247

ORDER

KOZINSKI, Chief Judge:

Complainant alleges that a circuit judge improperly authorized a commissioner's involvement in his appeal. The commissioner was authorized to act in complainant's case pursuant to the Ninth Circuit General Order 6.3(e).

Because the conduct complained of does not constitute misconduct, the charge against the circuit judge must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D); In re Complaint of Judicial Misconduct, 569 F.3d 1093, 1093 (9th Cir. Jud. Council 2009).

Complainant alleges that the commissioner made improper rulings with respect to the appointment of appellate counsel. Because these charges relate directly to the merits of the commissioner's determination, they must be dismissed.

See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B).

Complainant suspects that the commissioner committed fraud by creating false docket entries with regard to the appointment of counsel. The appellate

docket notes that a district court order appointed complainant's appellate counsel, but that order is not listed on the district court docket. Unfortunately, inaccurate docket entries can occur from time to time as a result of clerical error. Any inconsistency in the docket sheets constitutes no proof that the commissioner committed any kind of misconduct. Because there is 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 that the commissioner was hostile towards him. A review of the record in complainant's case discloses nothing that supports this allegation. There were no hearings, and it appears that all communications from the commissioner were by written orders, which are uniformly polite. Nor does complainant provide any other objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) to support his allegation. See In re Complaint of Judicial Misconduct, 569 F.3d at 1093. Adverse rulings do not constitute proof of hostility. Because there is no 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 is cautioned again that "[a] complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the

complaint procedure, may be restricted from filing further complaints.”

Judicial-Conduct Rule 10(a); In re Complaint of Judicial Misconduct, 552 F.3d

1146, 1148 (9th Cir. Jud. Council 2009). Any further complaints that present

fundamentally the same allegations may be dismissed summarily as frivolous and

result in sanctions.

DISMISSED.