

JUL 09 2010

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS**JUDICIAL COUNCIL  
OF THE NINTH CIRCUIT****IN RE COMPLAINT OF  
JUDICIAL MISCONDUCT**

No. 09-90133

**ORDER****KOZINSKI**, Chief Judge:

Complainant alleges that the district judge assigned to his civil case made various improper substantive and procedural rulings, including one that was vacated by the Ninth Circuit. These charges relate directly to the merits of the judge's rulings and must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B); see In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982). Complainant claims he is not disputing the merits of the judge's decision, rather he is challenging the judge's willful bad-faith actions in disregarding the Ninth Circuit's mandate. The judge's recent opinions and orders in the underlying matter disclose no defiance of the Ninth Circuit. Because there is no evidence of misconduct, these charges 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 favored opposing parties and had ex parte meetings with their lawyers. But complainant hasn't provided objectively

verifiable proof, such as names of witnesses, recorded documents or transcripts, to support these allegations, and adverse rulings alone do not constitute proof of favoritism. See In re Complaint of Judicial Misconduct, 583 F.3d 598, 598 (9th Cir. Jud. Council 2009). Because there is no evidence of misconduct, these charges must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant alleges that the judge has a history of being arbitrary and acting in “an imperious and abusive fashion.” But complainant doesn’t point to any examples of arbitrary or imperious conduct, let alone a pattern. He does provide what appears to be an email from an attorney calling the judge “very arbitrary” and asserting that he hates hearings. But a comment from a lawyer expressing a general view of the judge’s demeanor and temperament, unconnected to a specific incident, is insufficient to raise an inference of misconduct. These charges must be dismissed as unsupported. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant’s request to recuse the judge from his case is not cognizable under the misconduct complaint procedure. See Judicial-Conduct Rule 3(h)(3)(A).

**DISMISSED.**