

JUN 22 2010

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALSJUDICIAL COUNCIL  
OF THE NINTH CIRCUITIN RE COMPLAINT OF  
JUDICIAL MISCONDUCT

No. 09-90178

ORDER

**KOZINSKI**, Chief Judge:

Complainant, an attorney, alleges that a district judge demonstrated bias during a civil jury trial in retaliation for complainant's criticism of other judges. Complainant, who represented the plaintiff in the case, charges that the judge made numerous improper statements. But a review of the trial transcripts does not reveal anything to suggest that the judge harbored bias. Complainant's speculation that the judge held a grudge against him based on a conversation they had twelve years earlier is wholly implausible. Moreover, the factual basis for this charge was passed on by the panel that considered the merits of the appeal complainant filed on behalf of his clients. The panel concluded that the judge had not erred in failing to recuse himself. This charge is therefore precluded. See In re Complaint of Judicial Misconduct, 2010 WL 2011613, at \*2 (9th Cir. Jud. Council May 21, 2010).

To the extent complainant alleges that the judge made improper substantive

and procedural rulings or inappropriately commented on evidence, these charges relate 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); In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

Complainant also alleges that the judge falsely or mistakenly stated that he had not seen one of complainant's letters. Even if the judge had in fact seen the letter, complainant provides no proof that this statement was anything more than a mistake, and a misconduct complaint is not the proper means for challenging judicial mistakes. See In re Charge of Judicial Misconduct, 685 F.2d at 1227.

Because there is no evidence that misconduct occurred, these charges must also be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

**DISMISSED.**