JUDICIAL COUNCIL

OF THE NINTH CIRCUIT

IN RE COMPLAINT OF	No. 09-90222
JUDICIAL MISCONDUCT	**ORDER**

KOZINSKI, Chief Judge:

A pro se litigant alleges that a magistrate judge should have recused himself from her civil case because he is an alumnus of, and lectured at, a school that she named as one of the defendants. These allegations are merits-related and must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B); In re Complaint of Judicial Misconduct, 570 F.3d 1144, 1144 (9th Cir. 2009) ("[A]lleg[ations] that the judge should have recused himself . . . relate[] directly to the merits of the judge's rulings and must be dismissed."). A failure to recuse may constitute misconduct only if the judge "deliberately failed to [recuse] for illicit purposes," as to which complainant has presented no proof. Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice 146 (2006). To make such a claim, a complainant would have to present evidence that the judge was aware of a material conflict or was acting from a corrupt motive. Complainant's allegation that the judge had "close associations" with the university-defendant does not suffice. See United States ex. rel. Hochman v.

Nackman, 145 F.3d 1069, 1076 (9th Cir. 1998) ("[The law] does not require recusal for . . . minimal alumni contacts . . . . [including] when judge was alumnus of defendant-university, served as unpaid adjunct professor who offered internships for the university's law students, gave the university a yearly donation for football tickets, and planned to create scholarship at the university."). At most, complainant has presented an arguable ground for recusal, a matter that can be reviewed on appeal. See In re Complaint of Judicial Misconduct, 605 F.3d 1060, 1062 (9th Cir. 2010) ("Complainant doesn't present any evidence that the subject judge failed to recuse for an illicit reason; he simply disagrees with it. Such disagreement must be taken up, if at all, by way of an appeal."). Because there is no proof that misconduct occurred, this allegation must be dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant relatedly argues that the judge "Demonstrated Blatant Bias against Complainant and Unabashed Favoritism towards Defendants" as a result of his alumnal ties. But adverse rulings are not proof of bias, so this claim must also be dismissed as unsupported. See In re Complaint of Judicial Misconduct, 583 F.3d 598, 598 (9th Cir. 2009).

Complainant further alleges that the judge committed "fraud by definition" because he "knew the relevant facts, yet he concealed the relevant facts" about his

connection to one of the defendants. But complainant provides no proof that the judge misled anyone, or that he intended to do so. To the contrary, he acknowledged his ties to the school in his order, but found them insufficient to support recusal. Because there is no evidence of wrongdoing, these charges must be dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant also alleges that the judge should have allowed the parties to conduct discovery before dismissing her case. This charge relates 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); In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

Complainant also accuses the judge of "add[ing] insult to injury by ridiculing the [c]omplainant" in his order dismissing her case. But the complainant doesn't claim the judge called her names or made any improper comments about her personally; she complains only that the judge called her claims "fantastic or delusional." Judges are given wide latitude to express their views—even strong views—as to the merits of a case. See Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice 64 (2006). Indeed, the judge borrowed the "fantastic or delusional" language from the Supreme Court's standard for dismissing a frivolous case, language that has

been quoted over four hundred times in our circuit alone. See Neitzke v. Williams, 490 U.S. 319, 327–28 (1989) ("Examples of [factually baseless claims] are claims describing fantastic or delusional scenarios, claims with which federal district judges are all too familiar.").

A review of the order reveals the judge was at all times respectful, and that he thoroughly reviewed and ruled on all of complainant's claims. That his rulings were adverse to her is no evidence of bias, as there's one losing party in every case. See In re Complaint of Judicial Misconduct, 583 F.3d at 598. Because there is no evidence that misconduct occurred, this claim must be dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.