

NOV 24 2009

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

No. 09-90056

ORDER

KOZINSKI, Chief Judge:

Complainant alleges that a district judge ignored the state court record, his memorandum of law and his traverse. But ignoring a parties' arguments or the record is only misconduct if the circumstances are extraordinary, such as where it is improperly motivated or habitual. Cf. Judicial-Conduct Rule 3(h)(3)(B); In re Complaint of Judicial Misconduct, 552 F.3d 1146, 1148 (9th Cir. Jud. Council 2009). This is not the case here. The complaint points to only a few documents the judge allegedly didn't read, and the only evidence that the judge ignored the documents is that they weren't cited in the judge's order. This charge must be dismissed for failure to allege "conduct prejudicial to the effective and expeditious administration of the business of the courts." See Judicial-Conduct Rule 3(h)(1).

Complainant also alleges that the judge was mentally incompetent. But complainant hasn't provided any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) to support this allegation. See In

re Complaint of Judicial Misconduct, 569 F.3d 1093, 1093 (9th Cir. Jud. Council 2009). Adverse rulings do not constitute proof of mental incapacity. And complainant's statements ("he may well be arrogant to the point of mental disease and illness") show that this charge is based on speculation and conjecture. Because there is no evidence that the judge is disabled, this charge must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

The conduct in question occurred while the judge was sitting by designation in another circuit. The clerk is ordered to serve a copy of this order on the clerk of that court. See generally Judicial-Conduct Rule 7(b).

DISMISSED.