

FILED

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 10-90051

ORDER

KOZINSKI, Chief Judge:

Complainant, a pro se prisoner, alleges that a district judge acted improperly by dismissing his civil case even though a different judge allowed a plaintiff bringing the “exact same” case to proceed. 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 had ex parte communications with defendants, and conspired with them to dismiss his complaint. He alleges the judge “never had intentions” of allowing complainant’s suit to go forward and, by requiring him to amend, sought to frustrate him into dropping his case. But complainant hasn’t provided any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) to support these allegations. See In re Complaint of Judicial Misconduct, 569 F.3d 1093, 1093 (9th Cir. 2009).

Adverse rulings alone do not prove complainant's charges of partiality. See In re Complaint of Judicial Misconduct, 583 F.3d 598, 598 (9th Cir. 2009). And it wasn't an ex parte communication for the judge to order that the state's Attorney General's Office be notified of the dismissal order. Because there is no evidence that misconduct occurred, these charges must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainants's allegations against prison staff are dismissed because the misconduct complaint procedure applies only to federal judges. See Judicial-Conduct Rule 4.

DISMISSED.