

MAY 31 2011

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

No. 10-90053

ORDER

KOZINSKI, Chief Judge:

Complainants allege that a district judge engaged in a “consistent pattern of ‘cognizable misconduct’ . . . over the course of the past fourteen (14) years, which . . . began with and subsequently has entailed [the judge’s] actions to preclude proper consideration of his ordering the demonstrably prejudicial post-trial falsification of the filing date of the ‘(Redacted) Superceding Indictment’” in complainants’ criminal case. (Citations omitted.) Complainants also appear to allege that the judge feloniously altered the record in violation of 18 U.S.C. § 1506. But there is no evidence that the judge falsified anything, and he prejudiced complainants’ case only to the extent that he ruled against them. Adverse rulings are not misconduct, In re Complaint of Judicial Misconduct, 631 F.3d 961, 963 (9th Cir. Jud. Council 2011), and complainants have produced no other evidence to support their allegations. These charges must be dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainants filed a supplemental “Notice and corresponding request for

appropriate action regarding [the judge's] refusal to comply with or otherwise acknowledge complainants' pending motion for recusal," and a "Further notice" making similar claims. (Capitalization altered.) The judge declared one complainant a vexatious litigant over ten years ago and issued an order stating: "If the defendant files any further motions and the court does not respond within 30 days, the defendant may treat the motion as denied." (Emphasis added.) Thus, the judge did "acknowledge complainants' pending motion for recusal"; he denied it by failing to recuse within 30 days after the filing of the motion. The judge's failure to recuse may constitute misconduct only if it was "deliberately" done "for illicit purposes," which complainants haven't alleged, let alone proved.

Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice 146 (2006), available at <http://supremecourt.gov/publicinfo/breyercommitteereport.pdf>. This charge must also be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainants further allege that the judge demonstrated "consistent hostility" towards them, pointing to an "extreme" example in a hearing transcript attached to the complaint. A review of the transcript reveals that the judge was frustrated with one complainant's delay tactics and the fact that the complainant may have engaged in the unlicensed practice of law on behalf of his co-

complainant. The judge's comments and adverse rulings aren't proof of hostility.

See In re Complaint of Judicial Misconduct, 583 F.3d 598, 598 (9th Cir. Jud.

Council 2009). This charge must therefore be dismissed. See 28 U.S.C.

§ 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainants also point to “caption heading irregularities’ in the records forwarded by the District Court” to the Ninth Circuit as additional evidence of misconduct, but the “irregularities” appear to have been caused by an

administrative error that the Ninth Circuit’s Motions Unit promptly corrected.

This charge must also be dismissed. See 28 U.S.C. § 352(b)(2); Judicial-Conduct Rule 11(c)(1)(A).

Insofar as complainants challenge the judge’s vexatious litigant order or raise any of the arguments made in the petitions for panel rehearing and rehearing en banc attached to the complaint, the charges must be dismissed as merits-related.

See 28 U.S.C. § 352(b)(1)(A)(ii); In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

DISMISSED.