

DEC 29 2010

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

Nos. 10-90056 and 10-90085

ORDER

KOZINSKI, Chief Judge:

A pro se litigant alleges that two district judges should have recused themselves from his civil cases due to purported conflicts of interest. The second judge ruled on complainant's motion to recuse the first judge. Allegations that a judge erred in failing to recuse 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,” which was not alleged or shown here. 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>.

Complainant also suggests that the judges were “biased in favor of the defendant” and were engaged in a “covert operation for white collar criminals.”

But adverse rulings alone do not constitute proof of bias or conspiracy. See In re Complaint of Judicial Misconduct, 583 F.3d 598, 598 (9th Cir. 2009). Because complainant hasn't provided any other objectively verifiable proof to support these allegations, the claims must be dismissed. See id.; see also 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant further alleges that the first judge made various substantive and procedural errors. 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 first judge "erased and redacted" a hearing transcript, but hasn't provided any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) to support these allegations. Because there is no evidence that misconduct occurred, this charge must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D); In re Complaint of Judicial Misconduct, 569 F.3d 1093, 1093 (9th Cir. 2009).

Complainant's request that "the entire proceedings of [the first judge's] court [be] expunged and redacted in order to return to Small Claims and obtain the witness subpoena information necessary to conclude this case" is not an available

form of relief, even if misconduct were shown, which it was not. See 28 U.S.C. § 354(a)(2)(B); see also Ninth Circuit, Guidelines for Judicial Misconduct or Disability Complaints, http://www.ce9.uscourts.gov/misconduct/judicial_misconduct.html (last visited December 27, 2010) (explaining that the misconduct procedure “cannot change the outcome of [the complainant’s] underlying case”).

DISMISSED.