

JUN 27 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALSJUDICIAL COUNCIL
OF THE NINTH CIRCUIT

IN RE COMPLAINT OF JUDICIAL MISCONDUCT

No. 11-90051

ORDER

KOZINSKI, Chief Judge:

A pro se prisoner alleges that a district judge ruled incorrectly in his civil rights cases. These allegations are dismissed as merits-related. 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 showed bias against him by protecting defendants. But he provides no objectively verifiable proof to support this allegation. See In re Complaint of Judicial Misconduct, 569 F.3d 1093, 1093 (9th Cir. Jud. Council 2009). Adverse rulings don't prove bias. See In re Complaint of Judicial Misconduct, 583 F.3d 598, 598 (9th Cir. Jud. Council 2009). These charges must be dismissed as unsupported. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant further alleges that the judge ignored two of his filings. But the judge ruled on the underlying motion and, while he didn't explicitly rule on complainant's affidavit of bias, the judge's decision not to reassign proceedings

acted as a finding of no bias or prejudice. See 28 U.S.C. § 144. Review of the judge’s recusal decision would be merits-related and is thus not the proper subject of a misconduct complaint. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B); In re Complaint of Judicial Misconduct, 605 F.3d 1060, 1061–62 (9th Cir. Jud. Council 2010).

Insofar as complainant attacks the judge’s lack of a formal ruling in the past twelve months as undue delay, he also fails to state a claim. Delay isn’t misconduct unless it’s improperly motivated or habitual, and insufficient proof of either exists here. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D); In re Complaint of Judicial Misconduct, 584 F.3d 1230, 1231 (9th Cir. Jud. Council 2009).

Complainant previously filed two misconduct complaints against another judge that were dismissed for lack of evidence. See In re Complaint of Judicial Misconduct, Nos. 09-90136 and 10-90004 (9th Cir. Jud. Council 2010).

Complainant is cautioned that if he files “repetitive, harassing, or frivolous complaints,” or otherwise “abuse[s] the complaint procedure,” he “may be restricted from filing further complaints.” Judicial-Conduct Rule 10(a); see In re Complaint of Judicial Misconduct, 552 F.3d 1146, 1148 (9th Cir. Jud. Council 2009).

DISMISSED.