

AUG 07 2012

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

No. 12-90044

ORDER

**KOZINSKI**, Chief Judge:

A pro se litigant alleges that a district judge should have recused himself from complainant's civil case without waiting for a motion that he do so. Presiding over a case while aware of a disqualifying conflict of interest can amount to misconduct. See Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice 146 (2006). But complainant has provided no proof that the judge was aware of any conflict prior to his eventual decision to recuse himself, or that the judge was acting with a corrupt motive. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant speculates that the judge must have been hostile toward complainant, and aware of his hostility all along, because the judge ultimately recused himself in response to complainant's disqualification motion.

Complainant argues the recusal "would be both baseless and inappropriate" unless the judge really did feel hostile towards him. But judges of integrity sometimes

recuse themselves even when they feel no animosity towards a litigant, simply to ensure “he has no doubt that [his case] was decided solely on the merits.” See Order, In re Yagman, No. 11-56245 (9th Cir. 2012), ECF No. 37.

Complainant also refers to acrimonious relations between himself and the judge when the judge was acting as opposing counsel in a case. But that case occurred many years ago and complainant was well aware of it when this case was assigned to the judge, yet he did not make an immediate recusal motion. Complainant himself thus recognizes, quite correctly, that their past relationship did not present a disqualifying conflict of interest.

Finally, complainant refers to certain “threats” made by the judge against him, a pejorative reference to him in one of the judge’s orders and a website that lists anonymous complaints about the judge. The supposed threat consisted of the judge advising complainant that he could suffer sanctions if he repeated conduct that the judge considered improper. The comment is milder than those spoken by many judges who are faced with conduct they believe is inappropriate. This is not even improper judicial behavior, much less judicial misconduct. The pejorative comment is entirely accurate and germane to the point the judge was making—it was not (as complainant claims) gratuitous. A judge sometimes must voice unpleasant truths as part of his job. And complainant acknowledges that

anonymous comments “mostly cannot be used for any legal purpose.” The statement would be more accurate without the “mostly.” No one would be safe if anonymous internet opinions were given credence in legal proceedings.

Complainant’s allegations of misconduct must thus be dismissed as unsupported.

See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 569 F.3d 1093, 1093 (9th Cir. 2009); Judicial-Conduct Rule 11(c)(1)(D).

Complainant also claims that the judge’s purported personal bias against him disabled the judge from performing his duties. This is a transparent effort to recast an unmeritorious misconduct complaint into a disability complaint. The effort is futile because complainant provides no proof of disability. This charge must be dismissed as well. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 569 F.3d 1093, 1093 (9th Cir. 2009); Judicial-Conduct Rule 11(c)(1)(D).

**DISMISSED.**