

SEP 25 2012

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

IN RE COMPLAINT OF JUDICIAL MISCONDUCT

No. 12-90076

ORDER**KOZINSKI**, Chief Judge:

Complainant, a pro se prisoner, alleges that a district judge should have recused himself from complainant's civil case due to a conflict of interest. In general, allegations that a judge should have recused himself are merits-related and must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); In re Complaint of Judicial Misconduct, 579 F.3d 1062, 1064 (9th Cir. 2009); Judicial-Conduct Rule 11(c)(1)(B). An allegation that a judge presided in a case knowing that he was subject to a conflict of interest may present a viable claim of judicial misconduct. See Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice 146 (2006). But, to state such a claim, a complainant must provide convincing proof that the judge decided not to recuse for some illicit reason. Id.

Here, the only evidence presented was that the district judge had previously presided over complainant's criminal case. This doesn't come close to showing a

conflict of interest, much less misconduct. Judges occasionally preside over multiple cases involving the same party, and doing so is entirely proper. See In re Complaint of Judicial Misconduct, 650 F.3d 1370, 1371 (9th Cir. Jud. Council 2011). This allegation is dismissed because it fails to describe any misconduct on the judge's part. 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant also alleges that the district judge was biased against him in his civil case because the judge presided over his earlier criminal case. Once again, the mere fact that the judge presided over an earlier case involving the complainant is not evidence of misconduct. Because the complainant provides no further proof of bias, this charge must also be dismissed. See In re Complaint of Judicial Misconduct, 583 F.3d 598, 598 (9th Cir. 2009).

DISMISSED.