

JUDICIAL COUNCIL
OF THE NINTH CIRCUIT

MAR 15 2013

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

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| IN RE COMPLAINT OF JUDICIAL MISCONDUCT |
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No. 12-90117

ORDER**KOZINSKI**, Chief Judge:

Complainant, a state prisoner, alleges that a district judge improperly denied his habeas petition. This allegation relates directly to the merits of the judge's ruling and must therefore be dismissed. 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); Judicial-Conduct Rule 11(c)(1)(B).

Complainant further alleges the district judge is personally biased against him. But adverse rulings aren't proof of bias. See In re Complaint of Judicial Misconduct, 583 F.3d 598, 598 (9th Cir. 2009). Because complainant hasn't offered any other evidence of misconduct, this charge also must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant accuses the district judge of engaging in ex parte communications with the prosecutor, and then assigning the case to himself in order to dismiss it. An individual "has no right to any particular procedure for the selection of the judge" and is only "entitled to have that decision made in a manner

free from bias or the desire to influence the outcome of the proceedings.” Cruz v. Abbate, 812 F.2d 571, 574 (9th Cir. 1987). Complainant has presented no evidence that the assignment of his case to the subject judge departed in any manner from the district’s normal assignment process. An allegation “that a judge conspired with a prosecutor in order to reach a particular ruling” may present a viable claim of judicial misconduct. Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice 145–46 (2006). But, to state such a claim, a complainant would have to provide convincing proof that the judge did in fact conspire to rule against him. See id. Because complainant has presented no proof of ex parte communications, that the judge conspired against him or that the judge acted with a corrupt motive in denying his habeas petition, these charges must be dismissed as entirely unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.