

FILED

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 12-90125

ORDER

KOZINSKI, Chief Judge:

A pro se litigant alleges that a district judge should not have presided over her second bankruptcy appeal because he made adverse rulings in her first bankruptcy appeal. 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 made adverse rulings in complainant's previous bankruptcy appeal. This doesn't come close to

showing a conflict of interest, much less misconduct. This allegation is therefore dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant further alleges that the judge assigned the second case to himself in order to dismiss it. An individual “has no right to any particular procedure for the selection of the judge.” Cruz v. Abbate, 812 F.2d 571, 574 (9th Cir. 1987). While an individual “is entitled to have that decision made in a manner free from bias or the desire to influence the outcome of the proceedings,” id., complainant offers no evidence that her case was assigned to the subject judge for an impermissible reason. In order to conserve judicial resources, related cases are often assigned to the same judge. This charge is therefore dismissed. See In re Complaint of Judicial Misconduct, 632 F.3d 1287, 1288 (9th Cir. Jud. Council 2011).

Complainant further alleges that the judge delayed ruling on her case. But delay is not cognizable “unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” In re Complaint of Judicial Misconduct, 567 F.3d 429, 431 (9th Cir. 2009) (quoting Judicial-Conduct Rule 3(h)(3)(B)). Complainant hasn’t provided any evidence that the alleged delay was habitual or improperly motivated. These charges must be dismissed because there is no evidence that

misconduct occurred. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant's request that her case be assigned to a panel of three circuit judges is denied because this is not a form of relief available under the misconduct complaint procedure. See 28 U.S.C. § 354(a)(2); Judicial-Conduct Rule 11(a).

Complainant's previous complaint against this judge, which included some of the same allegations, was dismissed. See In re Complaint of Judicial Misconduct, No. 07-89129 (9th Cir. Jud. Council 2008). Further misconduct complaints presenting fundamentally the same allegations may be summarily dismissed as frivolous. Judicial-Conduct Rule 10(a); see also In re Complaint of Judicial Misconduct, 552 F.3d 1146, 1148 (9th Cir. Jud. Council 2009).

Moreover, complainant is cautioned that a "complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints." Judicial-Conduct Rule 10(a).

DISMISSED.