

MAY 22 2013

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT****IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**Nos. 12-90135, 12-90159,
13-90033, 13-90034 and
13-90044**ORDER****KOZINSKI**, Chief Judge:

Complainant, a disbarred attorney, asks that I disqualify myself from reviewing his misconduct complaint against the district judge who dismissed his civil case and declared him a vexatious litigant. Because complainant hasn't presented any facts or evidence that would warrant my disqualification, I deny his request. Cf. Judicial-Conduct Rule 25(a). While complainant alleges that I am a "material witness" against the district judge, complainant doesn't explain how or why. Nor will I rule on complainant's motion for reconsideration that the district judge be disqualified. That motion has already been denied by another judge.

Complainant brings outlandish and unsupported accusations against the aforementioned district judge, three other district judges and one circuit judge, all of whom handled civil cases related to his disbarment. He claims the judges each did one or more of the following: engaged in improper ex parte communications,

failed to disclose personal friendships and financial entanglements with lawyers, participated in money laundering and RICO violations, exhibited bias against him and conspired to “fix” or “sabotage” the civil cases related to his disbarment.

Because complainant provides absolutely no evidence supporting these allegations, they are dismissed as baseless. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant further alleges that the judges issued improper or incompetent rulings. These charges relate directly to the merits of the judges’ decisions 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 also speculates that some of the judges failed to draft their own orders and permitted staff to affix the judges’ stamped or electronic signatures to those orders. Even if true, this allegation doesn’t identify misconduct. See Judicial-Conduct Rule 11(c)(1)(A). It is entirely proper for judges to avail themselves of help from law clerks, staff attorneys and other court personnel. To the extent that complainant alleges that one district judge permitted a staff attorney from another district to work on complainant’s case, even though judges in the latter district were recused, the charge is unsupported by any evidence. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

And, even if true, this would not amount to misconduct. This charge, too, must be dismissed as baseless. See Judicial-Conduct Rule 11(c)(1)(A).

Nor is there any basis for complainant's charge that one of the judges should have recused in his civil case because the judge was a defendant in complainant's earlier-filed suit against all the judges in a federal district. The earlier suit was dismissed before the later suit was even placed on the judge's docket. In any event, allegations that a judge failed to recuse are merits-related and must be dismissed absent evidence that the judge acted with an improper motive. In re Complaint of Judicial Misconduct, 647 F.3d 1181, 1181 (9th Cir. 2011). There is no such evidence here.

Complainant alleges that the same district judge is "incompetent and disabled to act [sic]," and that another judge is aware of the infirmity. But the first judge's adverse rulings do not prove a mental disability. See In re Complaint of Judicial Misconduct, 583 F.3d 598, 598 (9th Cir. 2009). Because complainant offers no other evidence to support his claim beyond anonymous postings from a blog, the charge is dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant further alleges that the circuit judge should not have heard his appeal because he is suing the judge's spouse, along with the former governor, the

state attorney general and sundry others, in federal court. But complainant had not yet sued the judge's spouse at the time the appeals court summarily affirmed the dismissal of his case. The judge therefore had no conflict of interest. And, as already noted, the judge's failure to recuse is a merits decision that cannot be challenged in a misconduct proceeding absent evidence of illicit motive, which complainant hasn't shown. See In re Complaint of Judicial Misconduct, 647 F.3d at 1181.

Finally, complainant alleges that the clerk of court "rigged" the assignment of his cases to certain district judges. 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). Here complainant presents no evidence that the clerk departed in any manner from the district's normal assignment process. In any event, misconduct proceedings cover only federal judges, not the clerk of court or other staff. See Judicial-Conduct Rule 4. This charge, and all other charges against law clerks and staff attorneys, must therefore be dismissed.

Complainant's scattershot, frivolous complaints are an abuse of the misconduct complaint process. If complainant files any further misconduct

complaints presenting substantially the same allegations, they will be summarily dismissed as frivolous. 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). See, e.g., In re Complaint of Judicial Misconduct, 623 F.3d 1101, 1102–03 (9th Cir. Jud. Council 2010) (imposing such a sanction); In re Complaint of Judicial Misconduct, 601 F.3d 1005, 1006 (9th Cir. Jud. Council 2010) (same).

DISMISSED.