

FILED

OCT 02 2014

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 12-90160 and 12-90161

ORDER

KOZINSKI, Chief Judge:

Complainant alleges that two district judges engaged in “inappropriate conduct by either ruling in several matters in which [they] had a personal financial interest or personally gained from rulings [they] made.” The complainant’s sworn statement of facts doesn’t “detail[] the specific facts on which the claim of misconduct or disability is based,” Judicial-Conduct Rule 6(b); instead, it refers to an article posted on the internet by a third party. The article alleges the subject district judges owned stock in certain corporations at the time those corporations appeared before them.

Although judicial misconduct complaints may include exhibits, any such exhibits must “directly support the allegations of misconduct or disability in the statement of facts,” In re Complaint of Judicial Misconduct, 630 F.3d 968, 969 (9th Cir. Jud. Council 2010), not substitute for them. The specific facts that constitute the alleged misconduct must all be stated under penalty of perjury in

the complaint. Judicial-Conduct Rule 6(b), (d). These requirements are designed to ensure the integrity of the complaint procedure, so that the Judicial Council acts only based on specific, verified allegations, not mere speculation. See In re Complaint of Judicial Misconduct, 630 F.3d at 969–70.

The complaint here contains only a conclusory allegation of misconduct and relies entirely on an internet article written by a third party for supporting factual allegations. The complaint is therefore subject to review under Rule 5, which requires the chief judge to identify a complaint only if there is “clear and convincing” evidence of misconduct. See Judicial-Conduct Rule 5(a); In re Complaint of Judicial Misconduct, 644 F.3d 844, 845 (9th Cir. 2011); see also In re Complaint of Judicial Misconduct, 630 F.3d 1262, 1262 (9th Cir. Jud. Council 2011).

Regardless, the complaint fails to allege misconduct under any standard. As an initial matter, allegations that a judge erred in failing to recuse are merits-related and must be dismissed. See Judicial-Conduct Rule 11(c)(1)(B); In re Complaint of Judicial Misconduct, 579 F.3d 1062, 1064 (9th Cir. 2009); see also 28 U.S.C. § 352(b)(1)(A)(ii). Furthermore, even if I take notice of the facts alleged in the internet article, complainant hasn’t provided any evidence that the judges were aware of their financial interests at the time they made the rulings in

question or were otherwise acting with a corrupt motive. See 28 U.S.C. § 455(b)(4); In re Complaint of Judicial Misconduct, 756 F.3d 1143, 1144 (9th Cir. Jud. Council 2014), aff'd, In re Complaint of Judicial Misconduct, No. 12-90162, Slip op. at 2 (9th Cir. Jud. Council Sept. 26, 2014); Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice 146 (2006). Nor has complainant alleged, much less offered any proof, that the judges' interests were substantially affected (or affected at all) by the outcome of the proceedings. See In re Complaint of Judicial Misconduct, 756 F.3d at 1144. The allegations are therefore dismissed as baseless. Judicial-Conduct Rule 11(c)(1)(D).

Complainant further alleges that one of the judges improperly redacted certain information in his financial disclosure statements. But these reports are filed by judges in unredacted form with the Judicial Conference of the United States Committee on Financial Disclosure (the "JCUS Committee"). See Comm. on Fin. Disclosure, Filing Instructions for Judicial Officers and Employees 62–63 (2010). Any redactions are made by the JCUS Committee staff prior to public disclosure in conformity with the Ethics in Government Act of 1978 and Judicial Conference regulations, not by the judge. Id. Thus, the allegations that the judge made improper redactions must be dismissed as unfounded. See Judicial-Conduct

Rule 11(c)(1)(D); see also 28 U.S.C. § 352(b)(1)(A)(iii). “Misconduct proceedings are not a forum to second-guess whether the JCUS Committee properly approved reports or correctly interpreted the statutory regulations.” In re Complaint of Judicial Misconduct, 756 F.3d at 1143.

DISMISSED.