

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. 13-90063

ORDER

KOZINSKI, Chief Judge:

Complainant, a named plaintiff in a civil class action, alleges that a district judge should have self-recused in that case. To the extent that complainant alleges that the judge's decision not to recuse himself was erroneous, the allegation relates directly to the merits of the judge's rulings on his recusal and must therefore be dismissed. See Judicial-Conduct Rule 11(c)(1)(B); In re Complaint of Judicial Misconduct, 623 F.3d 1101, 1102 (9th Cir. Jud. Council 2010); In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982); see also 28 U.S.C. § 352(b)(1)(A)(ii). That another district judge eventually granted complainant's recusal motion does not mean that the subject judge's failure to recuse was misconduct.

Complainant refers to prior contentious interactions between complainant and the judge, including a prior instance in which complainant filed a judicial misconduct complaint against the judge. The judge, in the course of defending

against the misconduct charge, stated that complainant had a “personal vendetta” against the judge due to past interactions. But a past relationship need not present a disqualifying conflict of interest, see In re Complaint of Judicial Misconduct, No. 12-90044, at 1–2 (9th Cir. Jud. Council Aug. 7, 2012), and the fact that the judge previously stated that complainant had a personal vendetta against the judge isn’t evidence that the judge harbored any reciprocal bias or prejudice against complainant. Indeed, the order granting complainant’s recusal motion (which complainant fails to cite) observed that complainant didn’t allege the judge made any statements evidencing personal bias or prejudice, and that the recusal decision was “a close case.” Complainant’s allegations of misconduct must therefore be dismissed as unsupported. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

The fact that the first district judge to whom complainant’s recusal motion was referred recused himself isn’t evidence of misconduct of the subject judge. As we’ve repeatedly explained, a judge may self-recuse “simply to ensure ‘he has no doubt that [his case] was decided solely on the merits.’” In re Complaint of Judicial Misconduct, No. 12-90044, at 2 (quoting Order, In re Yagman, No 11-56245, at 2 (9th Cir. May 29, 2012) (ECF No. 37)). Failure to self-recuse is seldom, if ever, misconduct, especially when the basis for possible recusal is well-

known to the affected party.

DISMISSED.