

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. 13-90073

ORDER

KOZINSKI, Chief Judge:

A represented litigant alleges that a bankruptcy judge made improper rulings and should have recused himself from a bankruptcy matter. These charges relate directly to the merits of the judge's rulings and are therefore dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); In re Complaint of Judicial Misconduct, 623 F.3d 1101, 1102 (9th Cir. Jud. Council 2010) (holding that the decision not to recuse is merits-related); In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982); see also Judicial-Conduct Rule 11(c)(1)(B).

Complainant further alleges that the judge favored the defendants and conspired with them and others to rule against complainant. He suggests that the judge received some sort of political favor from a state official in exchange for the rulings. Adverse rulings aren't proof of bias, conspiracy or bribery. See In re Complaint of Judicial Misconduct, 583 F.3d 598, 598 (9th Cir. 2009).

Complainant has provided no objectively verifiable proof in support of these

conspiracy allegations; they are based, like the rest of the complaint, on speculation and innuendo. This charge must therefore be dismissed. See In re Complaint of Judicial Misconduct, 569 F.3d 1093, 1093 (9th Cir. 2009).

Complainant also alleges that the judge improperly engaged in ex parte hearings and allowed his law clerks to communicate ex parte with opposing counsel. Complainant raised the same claims on appeal, and the Court of Appeals found them meritless. See Blixseth v. Yellowstone Mountain Club, LLC, No. 12-35986, 2014 WL 606707 at *2–3 (9th Cir. Feb. 18, 2014) (per curiam).

Complainant provides no additional evidence here in support of these claims.

These allegations are 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 also points to an alleged ex parte communication of a different judge, suggesting that the subject judge had some responsibility for that conduct.

The Court of Appeals dismissed this claim because there was no evidence that the subject judge had any connection to the alleged conduct. Blixseth, 2014 WL

606707, at *3. Complainant presents no evidence that the named judge was aware of the alleged communication or that he had a duty to oversee the other judge.

This charge must be dismissed because the charged behavior does not amount to

“conduct prejudicial to the effective and expeditious administration of the business

of the courts.” See 28 U.S.C. § 351(a); Judicial-Conduct Rule 11(c)(1)(A).

To the extent that complainant has presented any information constituting reasonable grounds for inquiry as to whether the unnamed judge engaged in misconduct, the matter is moot because that judge has since retired. See In re Charge of Judicial Misconduct, 91 F.3d 90, 91 (9th Cir. Jud. Council 1996).

Complainant filed a supplement to his complaint noting that he had found the subject judge’s name listed as if associated with the judge’s previous law firm on the website “data.com,” and further claiming that the judge might still use his old law firm email address. 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 the law firm’s website does not list the judge’s name, nor is the email address active. It appears that the data.com website used cached data that has not been updated to reflect the current firm listings. The data.com screen shot, without more, is not sufficient to show that the judge was still affiliated with or had a continuing financial interest in the firm. The fact that a judge was formerly associated with a law firm appearing in his court is not, by itself, cause to question the judge’s impartiality. Because it is clear that no misconduct occurred, this charge must be dismissed as well. See 28

U.S.C. § 352(b)(1)(A)(iii).

Complainant's statement of facts was signed by his attorney of record, who had also filed an appeal containing many of the same meritless allegations. A complaint of judicial misconduct is subject to the normal constraints on court filings, including the requirement of good faith and a proper factual foundation. Failure to observe these basic requirements of proper pleading may subject a complainant and his lawyers to sanctions. In re Doe, 70 F.3d 56, 60 (8th Cir. 1995); In re Sassower, 20 F.3d 42, 44 (2d Cir. Jud. Council 1994); In re Complaint of Judicial Misconduct, 2 Cl. Ct. 255, 258–62 (1983). Complainant and his counsel are 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 also 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.