

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

FILED

MAY 18 2015

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

<p>IN RE COMPLAINT OF JUDICIAL MISCONDUCT</p>
--

No. 14-90124

ORDER

THOMAS, Chief Judge:

A pro se prisoner alleges that a district judge improperly dismissed complainant’s civil cases under 28 U.S.C. § 1915’s “three strikes” rule, and made other improper rulings. These allegations call into question the correctness of the judge’s rulings, and must be dismissed because they relate directly to the merits of those rulings. 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 further alleges that the judge should have recused herself from a civil matter in which complainant named the judge as a defendant. “A failure to recuse may constitute misconduct only if the judge failed to recuse for an improper purpose.” In re Complaint of Judicial Misconduct, 605 F.3d 1060, 1062 (9th Cir. Jud. Council 2010). Complainant fails to make any such showing here, and accordingly his recusal claim must be dismissed for failure to allege misconduct. See Id.; Judicial-Conduct Rules 3(h)(3)(A), 11(c)(1)(A), (B); see also United

States v. Studley, 783 F.2d 934, 40 (9th Cir. 1986) (“A judge is not disqualified by a litigant’s suit or threatened suit against him”); Ronwin v. State Bar of Arizona, 686 F.2d 692, 701 (9th Cir. 1981) rev’d on other grounds sub nom. Hoover v. Ronwin, 466 U.S. 558 (1984) (“(a) judge is not disqualified merely because a litigant sues or threatens to sue him ... Such an easy method for obtaining disqualification should not be encouraged or allowed”).

Complainant also alleges that the judge is biased against him due to his sexual orientation. Adverse rulings alone are not proof of bias, and complainant has offered no other evidence of misconduct, so this charge must also be dismissed. See In re Complaint of Judicial Misconduct, 583 F.3d 598 (9th Cir. Jud. Council 2009); see also 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant further alleges that the judge delayed seven months before ruling on two in forma pauperis motions. However, a delay claim 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. Jud. Council 2009) (quoting Judicial-Conduct Rule 3(h)(3)(B)). Complainant has not 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 alleges that the judge engaged in ex parte communication with an Assistant United States Attorney. However, complainant provides no objectively verifiable proof, such as names of witnesses, recorded documents or transcripts, to support this misconduct allegation, see In re Complaint of Judicial Misconduct, 569 F.3d 1093 (9th Cir. Jud. Council 2009), and thus it must be dismissed as unsupported. 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant claims that the judge is incompetent and seeks out “fake” reasons to dismiss cases as a way to manage her large case load, but these charges must be dismissed as unfounded. 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant’s request that his cases be assigned to another judge is not a form of relief that is available under the misconduct complaint procedure. See Judicial-Conduct Rule 11(a); 28 U.S.C. § 354(a)(2).

DISMISSED.