

FILED

MAR 8 2018

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 15-90081

ORDER

THOMAS, Chief Judge:

Complainant, a non-party, filed a complaint of judicial misconduct against a district judge who was presiding over a civil case. Because complainant filed an appeal raising many of the same allegations, the misconduct complaint was held in abeyance until the appellate proceedings concluded. *See* Commentary to Judicial-Conduct Rule 3. The Court of Appeals dismissed complainant's appeal concluding that it lacked jurisdiction to review the orders from which complainant appealed.

Complainant alleges that the district judge made improper rulings, including denying his attorneys' motions for pro hac vice appointment, and striking complainant's motions to intervene and to disqualify because the motions were not submitted by an admitted attorney nor by complainant appearing pro se. 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 Charge of Judicial Misconduct*,

685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982); Judicial-Conduct Rule 11(c)(1)(B). He also contends that the judge should have been recused from the case. However, complainant filed a recusal motion and presented the facts and arguments concerning recusal to the judge, and the judge denied the motion. Thus, this charge also relates directly to the merits of the judge's ruling and must be dismissed. *See In re Complaint of Judicial Misconduct*, 647 F.3d 1181 (9th Cir. Jud. Council 2011) (holding that the decision not to recuse, absent evidence of an improper motive, is merits-related).

Complainant alleges that the judge showed bias by launching his own investigation into complainant's actions. As the judge explained in his order denying the defendant's motion to recuse, an inquiry into the complainant's actions was relevant to determine the extent of the defendants' resistance to the judge's directives in contempt proceedings. Complainant provides insufficient evidence to raise an inference that misconduct has occurred, and these allegations must be dismissed. *See* 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant also alleges that the judge's comments about him, made in the courtroom and in written orders, amounted to libel. Judges are immune from defamation suits for statements made in the course of judicial proceedings.

Further, judges are given wide latitude to express their views—even strong views—as to the merits of a case. *Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice*, 64 (2006). Because complainant has not presented any evidence that the judge’s particular comments or behavior rises to the level of judicial misconduct, this charge must be dismissed. *See* 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.