

FILED

JUN 13 2016

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 16-90061

ORDER

THOMAS, Chief Judge:

Complainant, a pro se prisoner, alleges that a magistrate judge made various improper procedural and substantive rulings in his civil case. These allegations relate directly to the merits of the judge’s rulings and must be 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).

Complainant also alleges that the judge ignores Ninth Circuit and Supreme Court precedent. Although a pattern and practice of disregarding controlling precedent may amount to misconduct, “a complainant must at a minimum allege that the rulings in question have been reversed[.]” In re Complaint of Judicial Misconduct, 631 F.3d 961, 962 (9th Cir. Jud. Council 2011). Moreover, “a single reversal, or even a handful of reversals, doesn’t prove misconduct The number of erroneous rulings must be large enough that it could constitute a pattern.” Id. Complainant fails to make any such showing, and accordingly, these

charges are dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 583 F.3d 598 (9th Cir. Jud. Council 2009); Judicial-Conduct Rule 11(c)(1)(D).

Next, complainant alleges that the judge is biased against him and against racial minorities in general. However, adverse rulings alone are not proof of bias, and complainant provides no objectively verifiable evidence to support these allegations, which must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 583 F.3d 598 (9th Cir. Jud. Council 2009); Judicial-Conduct Rule 11(c)(1)(D).

Complainant further alleges that the judge cannot be impartial in the underlying case because she is a former prosecutor. It is well established that a judge need not recuse from all cases involving criminal defendants or prisoners, simply because he or she served as a prosecutor in previous, unrelated cases. See United States v. Silver, 245 F.3d 1075, 1079-80 (9th Cir. 2001) (“Silver urges this court to . . . require a judge to recuse himself whenever he has served as United States Attorney in any other matter relating to the defendant presently before the judge. We decline to adopt such a broad interpretation of our [precedent]”); United States v. Scholl, 166 F.3d 964, 977 (9th Cir. 1999) (“Judge Silver was [previously] an Assistant United States Attorney . . . [but] did not have supervisory

power over the section of the office that investigated Scholl Judge Silver did not abuse her discretion in refusing to recuse herself”); Gravenmier v. United States, 469 F.2d 66 (9th Cir.1972) (holding that judge, who as United States Attorney was of counsel when defendant was tried and convicted of one charge, is not disqualified from presiding at prosecution of same defendant for unrelated offense). Because there is no evidence that misconduct has occurred, this charge is dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.