

DEC 05 2008

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 07-89072

ORDER

KOZINSKI, Chief Judge:

A misconduct complaint has been filed against a district judge. Complainant, an organization affiliated with a religious denomination, filed an Establishment Clause suit in district court. The subject judge was assigned to the matter.

Complainant alleges that the judge made insulting and erroneous comments that demonstrated “an abiding hostility” toward the denomination. A review of the hearing transcript does not reveal any language sufficient to establish that the judge harbored bias or hostility that would prevent fair judgment in the case. The judge asked challenging questions of the lawyers for both parties, and nothing she said can reasonably be construed as showing bias for or against either party. Because there isn’t sufficient evidence to raise an inference that misconduct occurred, this charge must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Misconduct Rule 4(c)(3).

Complainant also alleges that the judge improperly blamed the denomination for the challenged government action in the order dismissing the case. The judge's discussion of the denomination's role is part of the judge's legal analysis. Because this charge relates directly to the merits of the judge's ruling, it must be dismissed.

See 28 U.S.C. § 352(b)(1)(A)(ii); Misconduct Rule 4(c)(1). A misconduct complaint is not a proper vehicle for challenging the merits of a judge's rulings.

See In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

DISMISSED.