

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. 07-89126

ORDER

KOZINSKI, Chief Judge:

A complaint of misconduct has been filed against a district judge of this circuit. Complainant, a pro se litigant, disputes her brother's ownership of a residence that he inherited from their mother. After losing in state court, complainant brought a civil rights suit in federal court against her brother and his wife and her brother's attorney in the state court proceedings. The case was assigned to the subject judge.

Complainant alleges that the judge improperly allowed two defendants to join another defendant's motion to dismiss, granted that motion to dismiss, didn't require defendants to file an answer, refused to grant complainant default judgment and allowed one defendant to act as an attorney without filing a notice of appearance. Because these charges are directly related to the merits of the judge's rulings, they are dismissed. 28 U.S.C. § 352(b)(1)(A)(ii); Rule 4(c)(1) of the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial

Misconduct or Disability (Misconduct Rules); see In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982) (a complaint of judicial misconduct is not a proper vehicle for challenging a judge's rulings).

Complainant also alleges that the judge failed to rule on her motion to reconsider, but the judge did so two weeks before complainant filed this complaint. The allegation is dismissed because it is conclusively refuted. 28 U.S.C. § 352(b)(1)(B); Misconduct Rule 4(c)(3). Though it took nearly a year for the judge to rule on this motion, delay is not misconduct except in extraordinary circumstances, which aren't present here. See Commentary on Misconduct Rule 1.

Finally, complainant makes scattered allegations that the subject judge "has clearly not been impartial," was biased, lacked patience and courtesy, and that he retaliated against complainant. Complainant provides no evidence supporting any of these allegations, except the fact that the judge ruled against her. But an adverse ruling is hardly proof of bias or any of the other pejoratives complainant hurls at the judge. The charges are therefore dismissed for lack of sufficient evidence to raise an inference that misconduct occurred. 28 U.S.C. § 352(b)(A)(iii).

DISMISSED.