

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

MAY 14 2013

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

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 12-90126

ORDER**KOZINSKI**, Chief Judge:

Complainant, an attorney, alleges that a magistrate judge was hostile towards him during a hearing. The hearing transcript shows that the judge remained professional at all times, even if he was occasionally terse in his rulings and did threaten complainant with contempt. Complainant claims the judge summoned U.S. marshals to intimidate him during a recess, but complainant provides no evidence that the judge sent the marshals or that their appearance was in any way connected to the earlier colloquy. Because complainant hasn't provided objectively verifiable proof to support this allegation, it is dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 579 F.3d 1062, 1064 (9th Cir. 2009); Judicial-Conduct Rule 11(c)(1)(D).

Complainant also alleges that the judge made improper rulings and should have recused himself. These charges are dismissed as merits-related. See 28 U.S.C. 352(b)(1)(A)(ii); In re Complaint of Judicial Misconduct, 579 F.3d at 1064 (holding that a challenge to a failure to recuse is merits-related and must be dismissed); Judicial-Conduct Rule 11(c)(1)(B).

Complainant appears to be using the judicial disqualification and judicial complaint processes as a means for achieving litigation objectives that he was unable to achieve on the merits. As an officer of the court, complainant should know better. He is cautioned that “failure to observe the[] basic requirements of proper pleading[, good faith and adequate factual foundation,] may subject [him] to sanctions.” In re Complaint of Judicial Misconduct, 550 F.3d 769, 769 (9th Cir. 2008) (internal quotation marks omitted).

DISMISSED.