

FILED

AUG 17 2016

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 16-90104

ORDER

THOMAS, Chief Judge:

Complainant, a pro se litigant, alleges that a district judge made various improper rulings in her 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 it “seems as though” the judge had an improper ex parte communication with opposing counsel regarding scheduling. Complainant’s allegation is based purely on speculation and innuendo, and must be dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 569 F.3d 1093 (9th Cir. Jud. Council 2009)(“complainant’s vague insinuations do not provide the kind of objectively verifiable proof that we require”); Judicial-Conduct Rule 11(c)(1)(D). In any event, ex parte communications are allowed “for scheduling, administrative, or emergency

purposes,” provided that “the ex parte communication does not address substantive matters and the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication.” Code of Conduct for United States Judges, Canon 3(A)(4)(b). Complainant does not claim that the alleged communication involved anything other than scheduling. Accordingly, this charge is dismissed as unfounded and for failure to allege misconduct. See Judicial-Conduct Rule 11(c)(1)(A), (D).

Next, complainant alleges that the judge was biased in favor of the defendant. 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).

Finally, complainant alleges that “months and months” passed before the judge “repeated what has happened in the past.” Construed liberally, complainant appears to allege that the judge improperly delayed entering judgment. The record reflects that the judge entered a final disposition within a year of the case being filed. Moreover, complainant offers no evidence that any alleged delay was based on improper motive, or that the district judge has habitually delayed ruling in a

significant number of unrelated cases, and accordingly this charge must be dismissed. See Judicial-Conduct Rule 3(h)(3)(B); In re Complaint of Judicial Misconduct, 584 F.3d 1230, 1231 (9th Cir. Jud. Council 2009).

DISMISSED.