

FILED

MAY 9 2017

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 17-90025

ORDER

THOMAS, Chief Judge:

Complainant, a pro se prisoner, alleges that a district judge improperly failed to recuse himself, improperly denied complainant's motion to substitute counsel, failed to seal the courtroom during a hearing, and made various other improper rulings in the underlying criminal 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 Complaint of Judicial Misconduct, 647 F.3d 1181 (9th Cir. Jud. Council 2011) ("Allegations that a judge erred in failing to recuse are generally dismissed as merits-related"); 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 had a conflict of interest because he attended complainant's father-in-law's funeral, and was a member of the same church as complainant's father-in-law and fiancé. Complainant does not articulate how the judge's alleged friendship or shared religion with complainant's fiancé or

in-laws would bias the judge against complainant or otherwise create any conflict of interest. Complainant acknowledges that he raised this purported conflict with his attorney, who declined to raise the issue with the court. It is not misconduct, nor evidence of bias or an improper relationship, for a judge to attend an acquaintance's funeral, or to attend the same church as a potential witness or relative of a party. See Code of Conduct for United States Judges, Canon 4 (“A judge may engage in extrajudicial activities, including law-related pursuits and . . . social . . . activities”); Commentary to Canon 4 (“Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the society in which the judge lives”). Nor do complainant’s “vague insinuations . . . provide the kind of objectively verifiable proof that we require.” In re Complaint of Judicial Misconduct, 569 F.3d 1093 (9th Cir. Jud. Council 2009). Accordingly, this charge is dismissed as unfounded and for failure to allege misconduct. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(A), (D).

Next, complainant alleges that the judge was biased in favor of the government, and racially biased against complainant. Adverse rulings are not proof of bias, and complainant provides no objectively verifiable evidence to support these allegations, which 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).

Finally, complainant alleges that the judge “badgered” and yelled at complainant at several hearings. A review of the record, including the hearing transcripts cited by complainant, belies this allegation. Nothing in the record indicates that the judge treated complainant in a “demonstrably egregious and hostile” manner. In re Complaint of Judicial Misconduct, 761 F.3d 1097, 1098-99 (9th Cir. Jud. Council 2014). Accordingly, these allegations 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).

DISMISSED.