

JUL 08 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALSJUDICIAL COUNCIL
OF THE NINTH CIRCUIT**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 09-90084

ORDER**KOZINSKI**, Chief Judge:

Complainant, an attorney, alleges that a district judge demonstrated hostility and bias during a trial. Complainant represented plaintiff in a civil case where the jury returned a verdict for the defense. The case was not appealed and is now closed. Complainant primarily takes issue with the tone of the judge's various oral rulings. A review of the transcripts does not support the charges. Insofar as the judge used stern language when complainant failed to abide by one of the judge's rulings, the rebuke was measured and well-deserved. Adverse rulings do not constitute evidence of hostility or bias. Because there is no evidence that misconduct occurred, these charges must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

To the extent complainant alleges that the judge improperly sustained objections or commented on evidence, these allegations relate directly to the merits of the judge's rulings and must therefore be dismissed. See 28 U.S.C. §

352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B); In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

Complainant's request to remove the judge from two other cases is not cognizable under the misconduct complaint procedure and is therefore dismissed. See Judicial-Conduct Rule 3(h); In re Charge of Judicial Misconduct, 567 F.3d 429, 431 (9th Cir. Jud. Council 2009).

DISMISSED.