

**JUDICIAL COUNCIL  
OF THE NINTH CIRCUIT**

**FILED**

NOV 21 2014

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

<p><b>IN RE COMPLAINT OF JUDICIAL MISCONDUCT</b></p>
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No. 12-90094

**ORDER**

**KOZINSKI**, Chief Judge:

Complainant, a pro se prisoner, alleges that a district judge engaged in improper ex parte communications with his defense counsel during a “secret meeting” in the judge’s chambers. But an “ex parte hearing or communication only occurs when one party is not represented,” see United States v. Chango, 1 F.3d 837, 843 (9th Cir. 1993), and complainant does not claim that the prosecutor was excluded from the meeting. Further, complainant’s counsel later discussed the substance of the meeting with him, so the meeting was not secret in the sense that it was concealed from complainant. As such, complainant does not allege conduct “prejudicial to the effective and expeditious administration of the business of the courts,” and this charge must be dismissed. See Judicial-Conduct Rule 11(c)(1)(A). Insofar as complainant claims that the judge erred by excluding him and his family from the meeting, this is a merits-related claim reviewable, if at all, by way of appeal. It is not the proper subject of a misconduct complaint. See In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

Complainant also alleges that the judge failed to docket two of his court filings. But judges aren't responsible for docketing and don't supervise the clerk's office personnel in charge of that process. Accordingly, there is no evidence of judicial misconduct, and this charge is dismissed as unfounded. See In re Complaint of Judicial Misconduct, 630 F.3d 1262, 1263 (9th Cir. Jud. Council 2011); Judicial-Conduct Rule 11(c)(1)(A); see also Judicial-Conduct Rule 4.

Complainant alleges that the judge made improper decisions concerning who was allowed to view his sentencing hearing. However, the decision to open or close a judicial proceeding to certain members of the public relates directly to the merits. These charges must therefore be dismissed. See United States v. Waters, 627 F.3d 345, 361 (9th Cir. 2010) (addressing criminal defendant's argument that district court violated her public trial right); see also 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 at 1227.

Complainant further claims that the judge displayed hostility toward him by discouraging his allocution at his sentencing hearing. Upon review of the hearing transcript, it is clear that the judge was not hostile and did not interrupt complainant's allocution. Because complainant offers no other evidence to support his claim, this charge must be dismissed. See In re Complaint of Judicial Misconduct, 583 F.3d 598, 598 (9th Cir. Jud. Council 2009); see also 28 U.S.C.

§ 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant alleges that the judge's filing for bankruptcy rendered him unfit to be a judge and caused him to make mistakes in complainant's case.

Complainant provides no evidence that the judge was incompetent or unable to manage his case, so this allegation must be dismissed as unfounded. See 28

U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D). Complainant also

claims that the judge undervalued his home during his bankruptcy. That claim is

“directly related to the merits of the bankruptcy proceedings,” so it too must be

dismissed. In re Complaint of Judicial Misconduct, Nos. 12-90048+ (9th Cir. Jud.

Council 2014); see Judicial-Conduct Rule 11(c)(1)(B); In re Complaint of Judicial

Misconduct, 632 F.3d 1287, 1288 (9th Cir. Jud. Council 2011); see also 28 U.S.C.

§ 352(b)(1)(A)(ii).

Last, complainant alleges that the judge created an “appearance of impropriety” in a separate case by sentencing a defendant who had made a

sizeable donation to a charity the judge supports. Complainant's allegation is best

read as a claim that the judge should have recused himself in that case. “A failure

to recuse may constitute misconduct only if the judge failed to recuse for an

improper purpose.” In re Complaint of Judicial Misconduct, 605 F.3d 1060, 1062

(9th Cir. Jud. Council 2010). Complainant argues that some of the judge's

statements to the media following the sentencing demonstrate such an improper

purpose. I've reviewed those statements, and they don't reveal any misconduct, so this charge is dismissed as inadequately supported. See In re Complaint of Judicial Misconduct, 605 F.3d at 1062; Judicial-Conduct Rule 11(c)(1)(D); see also 28 U.S.C. § 352(b)(1)(A)(iii).

**DISMISSED.**