

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

FILED

NOV 17 2014

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

<p>IN RE COMPLAINT OF JUDICIAL MISCONDUCT</p>
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No. 13-90154

ORDER

KOZINSKI, Chief Judge:

Complainant, a pro se plaintiff, alleges that a district judge twice engaged in improper ex parte communications with defendants. Complainant claims that on one occasion the judge informed defendants that a case management conference was rescheduled, while complainant was notified later when the official scheduling order issued. On another occasion, according to complainant, the judge received defendant's input regarding the scheduling of a hearing. But 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). Assuming that these communications took place, they were both about scheduling, and complainant hasn't suggested that they hampered his case in any way. This claim is therefore dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii);

Judicial-Conduct Rule 11(c)(1)(D).

Complainant further alleges that the district judge was biased against him based on his pro se status. He claims that the district judge stated during oral argument that “a pro se plaintiff who is not an attorney cannot try a case in the federal court,” and made other demeaning comments about complainant’s efforts. The hearing transcript shows that this isn’t true; the judge encouraged complainant to retain counsel, but never stated or implied that complainant couldn’t represent himself at trial, nor did the judge demean complainant’s presentation. In fact, the judge complimented complainant’s presentation during the hearing. Because the hearing transcript fails to support any claim of bias, this charge is also 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 improperly delayed various aspects of his case. But delay isn’t misconduct “unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” Judicial-Conduct Rule 3(h)(3)(B); In re Complaint of Judicial Misconduct, 567 F.3d 429, 431 (9th Cir. Jud. Council 2009).

Complainant offers no evidence of habitual delay and, as noted, mentions no evidence of improper motivation. These charges are therefore dismissed. See 28

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

DISMISSED.