

FILED

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 14-90017 and 14-90029

ORDER

THOMAS, Chief Judge:

Complainant, a pro se litigant, alleges that a district judge showed favoritism to defense counsel by scheduling a hearing date on the defendants' motion for transfer before scheduling a hearing date for complainant's summary judgment motion. In his order transferring venue, the district judge explained that the defendants' motions were scheduled before complainant's motion in the interests of judicial economy. Judges have discretion to proceed with their court calendar as they see fit, and complainant provides no evidence that the judge was biased in favor of the defendants. Because complainant does not allege conduct "prejudicial to the effective and expeditious administration of the business of the courts," this charge is dismissed. See Judicial-Conduct Rule 11(c)(1)(A).

Complainant further claims that the judge must have had an improper ex parte communication with defense counsel for this earlier hearing date to have been selected and calendared. Because there is no evidence of any ex parte

communications, this charge also must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D). Assuming that these communications did take place, 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 has provided no evidence that the alleged communication was about anything but scheduling. This claim is dismissed also as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

To the extent that complainant alleges that the district judge failed to supervise his law clerk, the charge is dismissed as unsupported by any evidence. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 552 F.3d 1146, 1147–48 (9th Cir. Jud. Council 2009); Judicial-Conduct Rule 11(c)(1)(D).

In a second misconduct complaint, complainant alleges that a second district judge made racist and prejudicial comments to him in front of the jury. According to complainant, the judge made two comments advising complainant not to introduce certain evidence, stating “you don’t want to go there,” and “it is not in

your best interest to go there.” Complainant claims that these comments “demonized” him. Neither of these comments would prejudice “the effective and expeditious administration of the business of the courts,” so this claim is dismissed. See Judicial-Conduct Rule 11(c)(1)(A).

DISMISSED.