

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

FILED

AUG 1 2016

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

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 16-90079

ORDER

THOMAS, Chief Judge:

Complainant, a pro se plaintiff in a civil case, alleges that a magistrate judge improperly denied his motion for default judgment and should have recused himself. This allegation relates directly to the merits of the judge's rulings and must therefore be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982); In re Complaint of Judicial Misconduct, 623 F.3d 1101, 1102 (9th Cir. Jud. Council 2010) (holding that the decision not to recuse is merits-related); Judicial-Conduct Rule 11(c)(1)(B).

Complainant also alleges that the judge was biased against him. Because adverse rulings are not evidence of bias, see In re Complaint of Judicial Misconduct, 583 F.3d 598 (9th Cir. Jud. Council 2009), and complainant offers no objectively verifiable proof in support of this allegation, it must be dismissed as unsupported. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Finally, complainant alleges that the judge held improper ex parte communications with complainant by issuing minute orders without an appearance by the defendant. A review of the record shows that the judge ordered complainant to show cause as to why the action should not be dismissed for failure to prosecute, and also expressed doubts about whether the defendant had been properly served. Court orders, made on the record and available to the parties and the public, are not ex parte communications. Because complainant provides no evidence of misconduct, this allegation is dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(A), (D).

DISMISSED.