

FILED

MAR 23 2017

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 17-90006

ORDER

THOMAS, Chief Judge:

Complainant, a civil litigant represented by counsel, raises several allegations against a magistrate judge who was assigned to her case for settlement proceedings only. First, complainant alleges that following a settlement conference, the judge separated complainant from her attorney under the guise of having complainant read documents in private, but instead sat down with complainant in a conference room, questioned counsel's representation, and pressured complainant to settle her case. When counsel knocked on the door, the judge allegedly blocked the entrance, asked complainant whether the judge had permission to speak to complainant privately, then closed the door in counsel's face.

Pursuant to a limited inquiry under Judicial-Conduct Rule 11(b), the subject judge was asked to respond to these allegations. The judge explained that following a settlement conference, she was concerned that complainant did not

appreciate the risk of losing her case or continuing litigation, that counsel had an unrealistic view of the case, and that counsel was not explaining to complainant the full impact of the district court's prior rulings. The judge escorted complainant to a separate room to read the court's orders in private (without objection from counsel), and explained that complainant should read the orders herself to assess her litigation risks. The judge left for approximately fifteen minutes. Upon returning, the judge spoke briefly with complainant and confirmed that complainant had finished reviewing the orders. Shortly thereafter, counsel arrived and expressed concern that complainant and the judge had spoken privately. According to the judge, complainant assured counsel that nothing improper happened. The judge then summarized the topics she and complainant had discussed, including the likelihood that the presiding district judge would grant the opposing party's motion for summary judgment.

A review of the complaint, the attached declarations by complainant and counsel, the subject judge's response, and relevant portions of the underlying district court record indicate that no misconduct occurred. A judge who is assigned to a case for settlement purposes only—as a neutral engaged in alternate dispute resolution—is permitted to hold ex parte communications, encourage settlement, or express views about the strength of a case. See In re Complaint of

Judicial Misconduct, 838 F.3d 1030 (9th Cir. 2016) (“A judge conducting settlement proceedings may meet with the parties separately, may encourage settlement, and may convey a party’s offer and acceptance to facilitate the settlement”); see also In re Complaint of Judicial Misconduct, 647 F.3d 1181-82 (9th Cir. 2011) (“it’s not inappropriate for a settlement judge to have ex parte communications, in order to facilitate an agreement between the parties”); N.D. Cal. ADR Local Rule 7-1 (“A settlement Judge might articulate views about the merits of the case or the relative strengths and weaknesses of the parties’ legal positions”). Here, the record shows that the subject judge, based on the district court’s prior orders, had legitimate concerns about counsel’s representation and complainant’s understanding of the case. The judge’s statements were within her role as a mediator and were not improper. Complainant fails to allege any conduct “prejudicial to the effective and expeditious administration of the business of the courts,” 28 U.S.C. § 351(a), and accordingly these charges are dismissed. See In re Complaint of Judicial Misconduct, 726 F.3d 1060, 1062 (9th Cir. Jud. Council 2013) (“Because complainant’s charges wouldn’t constitute misconduct even if true, the complaint is dismissed as groundless”); Judicial-Conduct Rule 11(c)(1)(A).

Next, complainant speculates that the subject judge may have disclosed confidential information to the presiding district judge or the opposing party. Complainant offers no objectively verifiable evidence in support of this allegation. In response to a limited inquiry, the subject judge states that she discussed only scheduling issues with the district judge. In addition, complainant raised this allegation in a motion filed in the underlying civil case. In denying that motion, the presiding district judge similarly confirmed that the subject judge did not disparage complainant or counsel, or share any information regarding settlement negotiations. Complainant's allegation is based on speculation and innuendo, and must be dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 569 F.3d 1093 (9th Cir. Jud. Council 2009) (“complainant’s vague insinuations do not provide the kind of objectively verifiable proof that we require”); Judicial-Conduct Rule 11(c)(1)(D).

Finally, complainant alleges that the subject judge is biased. Adverse rulings are not proof of bias, see In re Complaint of Judicial Misconduct, 838 F.3d 1030 (9th Cir. 2016), and as discussed, the subject judge’s comments regarding complainant’s case were within her role as a settlement judge and were not improper. Complainant provides no objectively verifiable evidence to support her allegations of bias, which are dismissed as unfounded. See 28 U.S.C.

§ 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 583 F.3d 598 (9th Cir. Jud. Council 2009); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.