

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**

No. 17-90072

ORDER

THOMAS, Chief Judge:

Complainant, a pro se prisoner, alleges that a magistrate judge improperly continued a mediation conference and made various other improper rulings. These allegations relate directly to the merits of the judge's rulings and must 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); Judicial-Conduct Rule 11(c)(1)(B).

Complainant further alleges that the judge retaliated against him for being unprepared for a mediation conference. This allegation is belied by the record, which shows that complainant refused to participate in a scheduled hearing, then refused to participate in a scheduled mediation conference, claiming that the proposed mediation room was not adequately private and that his legal documents were confiscated by prison staff. The judge ordered opposing counsel to confer with the warden to ensure that the mediation room would be private, and directed

the warden to investigate complainant's allegation that his legal materials were confiscated. Following a report from opposing counsel, the judge ruled that the prison's response was adequate, and that complainant failed to show his legal materials were in fact confiscated. Complainant fails to make any showing of retaliation, or any other misconduct, and accordingly this allegation is dismissed as unfounded and conclusively refuted by objective evidence. See 28 U.S.C. § 352(b)(1)(A)(iii), (b)(1)(B); In re Complaint of Judicial Misconduct, 583 F.3d 598 (9th Cir. Jud. Council 2009); Judicial-Conduct Rule 11(c)(1)(D).

Complainant further alleges that the judge ordered prison staff to discipline complainant for lying, and failed to intervene when complainant informed the court that the prison was opening his legal mail. Complainant offers no proof in support of these allegations, which are unsupported by the record. To the contrary, the record shows that the judge directed opposing counsel to confer with the warden to determine whether proper procedures were being followed for the handling of legal mail. Accordingly, this allegation is dismissed as unfounded and conclusively refuted by objective evidence. See 28 U.S.C. § 352(b)(1)(A)(iii), (b)(1)(B); 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 judge is biased in favor of the opposing party. Adverse rulings are not proof of bias, and complainant provides no objectively verifiable evidence to support these allegations, 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).

Complainant has now filed three separate misconduct complaints against a total of four judges, and was cautioned in a previous order that repetitive, harassing or frivolous complaints may result in complainant being restricted from filing further complaints. See In re Complaint of Judicial Misconduct, No. 16-90016. Accordingly, complainant is ordered to show cause why he should not be sanctioned by a restrictive filing order. See Judicial-Conduct Rule 10(a); In re Complaint of Judicial Misconduct, 552 F.3d 1146, 1148 (9th Cir. Jud. Council 2009).

Complainant has thirty-five days from the filing of this order to file a response, which will be transmitted to the Judicial Council for its consideration.

DISMISSED and COMPLAINANT ORDERED TO SHOW CAUSE.