

FILED

DEC 11 2017

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 17-90084

ORDER

THOMAS, Chief Judge:

Complainant, a pro se litigant, makes several allegations against the magistrate judge assigned to his underlying case. First, complainant speculates that the judge must have had ex parte communications with opposing counsel, based on a “questionable timeline” involving the issuance and retraction of certain subpoenas. Complainant suggests that the timing “would lead a reasonable person to conclude” that someone contacted the court off-record. Complainant raised this issue in the underlying proceedings in a “protest pleading,” which the judge denied, noting that the subpoenas in question were issued in error, and that neither the clerk’s office nor the court held any ex parte communications. Complainant offers no objectively verifiable proof of ex parte communications, and accordingly this allegation 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) (“claimant's vague insinuations do not provide the kind of objectively verifiable proof that we require”); Judicial-Conduct Rule 11(c)(1)(D).

Complainant also alleges that at a case management conference, the judge chastised him “for nearly thirty minutes” for using profanity in a communication to opposing counsel. A review of the audio-recorded hearing belies this allegation. The judge did not treat complainant with any improper hostility. Rather, the judge reminded complainant that he was expected to use the same level of civility required of an attorney, and that profanity, harassment or threats would not be tolerated. The judge was respectful and professional throughout the hearing, and did not treat complainant in an egregious or hostile manner. Accordingly, this charge is dismissed as unfounded and conclusively refuted by objective evidence. See 28 U.S.C. § 352(b)(1)(A)(iii), (B); In re Complaint of Judicial Misconduct, 761 F.3d 1097, 1098-99 (9th Cir. Jud. Council 2014); Judicial-Conduct Rules 3(h)(1)(D), 11(c)(1)(D).

Complainant further alleges that the judge issued an order that “prejudicially and hostilely” misquoted his pleadings. A review of the underlying record, including the relevant order and pleadings, belies this allegation. The order paraphrased complainant’s claims and factual allegations, but did not “blatantly misquote” complainant’s pleadings. Moreover, even if the judge had misquoted

complainant's pleadings, this alone would not amount to "egregiously hostile treatment" or other cognizable misconduct. Accordingly, this allegation is dismissed as unfounded and for failure to allege misconduct. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 726 F.3d 1060, 1062 (9th Cir. Jud. Council 2013); In re Complaint of Judicial Misconduct, 583 F.3d 598 (9th Cir. Jud. Council 2009); Judicial-Conduct Rule 11(c)(1)(A), (D). Further, as complainant acknowledges, any challenge to the merits of the judge's order or other rulings is non-cognizable. 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).

Finally, complainant alleges that the judge is biased in favor of the defendants in the underlying case, and has "applied different standards" to the parties. However, 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).

DISMISSED.