

APR 24 2013

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALSJUDICIAL COUNCIL
OF THE NINTH CIRCUIT

IN RE COMPLAINT OF JUDICIAL MISCONDUCT

No. 12-90090

ORDER**KOZINSKI**, Chief Judge:

Complainant, an attorney, alleges that a bankruptcy judge misstated facts in a decision. This charge relates directly to the merits of the judge's ruling 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); Judicial-Conduct Rule 11(c)(1)(B).

Complainant also alleges that the judge prevented him from questioning a witness. But the only evidence of this alleged interruption is a notation the complainant appears to have typed onto the transcript himself. This charge is therefore dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D). Complainant further alleges that the judge “essentially testified” from the bench, but the transcript shows that the judge simply asked a question of counsel. This charge must therefore be dismissed as “conclusively refuted by objective evidence.” 28 U.S.C. § 352(b)(1)(B).

Finally, complainant alleges without proof that twenty-two minutes of testimony were “removed” from the trial transcript. Complainant could have, but did not, request a redaction of the transcript, as allowed by the court’s rules. In any event, it is the court reporter, not the judge, who prepares the transcript. Even if portions of the transcript were missing, there’s no evidence that the bankruptcy judge ordered them omitted, much less that the judge had an improper motive for doing so. This charge is therefore dismissed as “lacking sufficient evidence to raise an inference that misconduct has occurred.” Id. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.