

**FILED**

AUG 21 2015

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

**JUDICIAL COUNCIL  
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF  
JUDICIAL MISCONDUCT**

Nos. 14-90157 and 14-90158

**ORDER**

**THOMAS**, Chief Judge:

Complainants, an attorney and her client who are creditors in a bankruptcy proceeding, allege that a bankruptcy judge has treated them in an egregious and hostile manner. In particular, complainants allege that the judge was rude to counsel for appearing by telephone, raised his voice and continually interrupted counsel, and prohibited counsel from appearing telephonically at future hearings. A review of the relevant hearing transcript shows that counsel had an ample opportunity to be heard, repeatedly interrupted the judge, and in fact apologized for doing so. Based on difficulties in conducting the hearing, the judge requested that counsel no longer appear by telephone without the judge's prior, personal approval. Further, complainants allege that the judge threatened counsel not to contact an insurance company. The transcript clarifies that the judge admonished counsel not to contact the insurance company regarding a tentative ruling, as it could interfere with the Trustee's negotiations with the insurer. Complainants fail

to show that the judge threatened them or treated them in a demonstrably hostile manner, and these charges must be dismissed for lack of evidence. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 3(h)(1)(D); In re Complaint of Judicial Misconduct, 579 F.3d 1062, 1064 (9<sup>th</sup> Cir. Jud. Council 2009)

Complainants allege that the judge made disparaging remarks about state judges. This allegation is not supported by the underlying record, and complainants provide no objectively verifiable evidence to support this charge, which too must be dismissed. See Judicial-Conduct Rule 11(c)(1)(D); In re Complaint of Judicial Misconduct, 583 F.3d 598 (9<sup>th</sup> Cir. 2009).

Complainants allege that the judge made factual misrepresentations to support his rulings, including a tentative ruling that misstated which party had filed a declaration, and what was stated in that declaration. A review of the record shows that the judge mistakenly stated that the Trustee, rather than complainants, had filed the declaration. The judge acknowledged that mistake in a subsequent order denying a motion for recusal, in which complainants raised the same claim. Complainants offer no evidence that any error arose from bias or prejudice. Accordingly, these allegations must be dismissed as unsupported. See Judicial-Conduct Rule 11(c)(1)(D); In re Complaint of Judicial Misconduct, 583 F.3d 598 (9<sup>th</sup> Cir. Jud. Council 2009).

Complainants allege that the judge favored the Trustee and was punitive towards them with scheduling. Judges have discretion to proceed with their court calendar as they see fit, and complainants provide no evidence of bias or “punitive” scheduling. Because complainants fail to allege conduct “prejudicial to the effective and expeditious administration of the business of the courts,” this charge is dismissed. See Judicial-Conduct Rule 11(c)(1)(A). To the extent complainants allege that the judge improperly denied their motion for hearing on shortened notice, this charge relates directly to the merits of the judge’s ruling, and must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B); In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

Complainants allege that during an unspecified hearing, they were excused from the courtroom to discuss a confidential matter, and as they reentered, the judge, opposing counsel, and debtor were having a conversation. Complainants speculate that an improper ex-parte communication must have taken place, but present no facts supporting this allegation. This charge must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Finally, complainants allege that the judge demonstrated bias against their sexual orientation during a hearing and in his rulings. The underlying record

believes complainants' allegations, which mischaracterize the judge's comments. Complainants fail to show that any statements by the judge are indicative of bias, and this claim must be dismissed for lack of evidence. See Judicial-Conduct Rule 11(c)(1)(D); In re Complaint of Judicial Misconduct, 583 F.3d 598 (9th Cir. Jud. Council 2009). To the extent complainants allege that the judge improperly ruled that they lacked standing, this charge relates directly to the merits of the judge's ruling and must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B); In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

**DISMISSED.**