

NOV 12 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT****IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 09-90200

ORDER**KOZINSKI**, Chief Judge:

Complainant, an attorney, alleges that a bankruptcy judge is biased against her. Complainant claims the judge made a derogatory personal comment about her to a deputy clerk, but complainant does not reveal the name of the clerk to whom the alleged statement was addressed or provide any other proof that it was made. Complainant also claims the judge called her “dishonest” during a hearing. An audio recording of the hearing discloses that the judge expressed discomfort with confirming the plan based on counsel’s representations; the judge, instead, required an independent liquidation analysis. Bankruptcy judges make these kinds of decisions every day, and the judge’s refusal to rely on a lawyer’s representation did not approach impropriety or misconduct. The judge did not use a raised voice, call complainant “dishonest” or use any other abusive language. While the judge did use a stern tone, a firm judicial demeanor does not constitute misconduct. Because complainant does not provide any other objectively verifiable proof to support her allegations, this charge must be dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-

Conduct Rule 11(c)(1)(D); In re Complaint of Judicial Misconduct, 569 F.3d 1093, 1093 (9th Cir. Jud. Council 2009).

Complainant's request to be relieved from appearing at a hearing scheduled before the judge is dismissed as moot because the debtors voluntarily dismissed the case before the hearing occurred.

DISMISSED.