

OCT 18 2011

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

IN RE COMPLAINT OF JUDICIAL MISCONDUCT

No. 11-90082

ORDER**KOZINSKI**, Chief Judge:

Complainant alleges that a bankruptcy judge made several substantive errors in his Chapter 7 bankruptcy proceedings that amounted to a felonious “aiding and abetting” of the trustee’s “scheme to embezzle” complainant’s assets. Complainant attached a twelve-page statement of facts contrary to our rule limiting a complaint to five pages. See Local Misconduct Rule 6.1(b). The complaint was originally returned with a request to shorten it to five pages, but complainant refused and returned the original twelve-page complaint. Accordingly, the complaint is dismissed for failing to comply with our rules. See id.; Judicial-Conduct Rule 6(b); In Re Complaint of Judicial Misconduct, 630 F.3d 968, 969 (9th Cir. Jud. Council 2010).

The chief judge may nevertheless investigate alleged misconduct even if it is brought to his attention in a defective complaint. See Judicial-Conduct Rule 5(a). “Under Rule 5, a chief judge is required to identify a complaint only if the evidence of misconduct is clear and convincing.” In re Complaint of Judicial

Misconduct, 644 F.3d 844, 845 (9th Cir. Jud. Council 2011) (internal quotation marks and alteration omitted). A review of the twelve-page complaint discloses only claims that are merits-related and thus not the proper subject of a misconduct complaint. 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). There's thus no basis for identifying a complaint under Rule 5. "A chief judge's decision not to identify a complaint under Rule 5 is unappealable." In re Complaint of Judicial Misconduct, 644 F.3d at 845.

DISMISSED.