

FEB 02 2012

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

IN RE COMPLAINT OF JUDICIAL MISCONDUCT

No. 11-90100

ORDER**KOZINSKI**, Chief Judge:

Complainant, an attorney who is currently suspended from practice and faces criminal charges for fraud, alleges that a bankruptcy judge did not give him proper notice of two separate contempt hearings. Certificates of service show that complainant was notified of both hearing dates, and he has presented no evidence to the contrary. Nor has he presented evidence to support his allegation that the judge made an “active attempt” to cause him to fail to appear at one of the hearings by posting false information on the court’s online docketing system. These allegations are dismissed as unfounded. See 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 also alleges that the judge improperly disallowed filing privileges to him and a colleague, improperly joined him in a hearing on a trustee’s motion for sanctions and improperly allowed trustees to file briefs without giving

complainant an opportunity to respond. These charges relate directly to the merits of the judge's rulings and therefore are not cognizable in a misconduct proceeding. 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).

Complainant's charges are frivolous, suggesting that they were filed in bad faith, in an effort to harass or vex the bankruptcy judge. Complainant, who is a suspended lawyer, should know better. He is advised that any further charges against the judge based on the same or related facts may result in the imposition of sanctions. See Judicial-Conduct Rule 10(a).

DISMISSED.