

**FILED**

OCT 27 2014

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

**JUDICIAL COUNCIL  
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF  
JUDICIAL MISCONDUCT**

No. 14-90072

**ORDER**

**KOZINSKI**, Chief Judge:

Complainant, an attorney, alleges that a bankruptcy judge made “mean spirited and unfounded” comments to him during two hearings, the transcripts of which I have reviewed. In the first hearing, the judge expressed chagrin that complainant failed to produce a witness, attempted to utilize exhibits that were barred by the judge’s prior order and asked for attorneys’ fees without properly complying with the procedural requirements for such a request. The judge chided complainant for attempting to “sandbag” and “bamboozle” the court with these tactics, and told him that unless he “clean[s] up [his] practice” he would face “corrective sanction[s].” At the second hearing, the judge told complainant that the judge’s “court is not one in which you throw stuff at the court and then either the court catches you or the other side [does, and only] then [do] you . . . do it right.”

Complainant does not allege personal animus on the part of the judge nor

suggest that the results in the relevant proceedings have been influenced by bias. Furthermore, complainant may not challenge the judge's merits-related conclusions that complainant violated the court's procedures with regard to witnesses, exhibits and attorneys' fees. See Commentary to Judicial-Conduct Rule 3 ("Any allegation that calls into question the correctness of an official action of a judge—without more—is merits-related."); In re Complaint of Judicial Misconduct, 583 F.3d 598, 598 (9th Cir. 2009) ("[C]laims [that] relate directly to the merits of the judge's rulings . . . must . . . be dismissed."). These are matters that may be raised, if at all, by way of an appeal.

While a judge's public comments can constitute misconduct if they are sufficiently rude, derogatory or intemperate, see Judicial-Conduct Rule 3(h)(1)(D) ("Misconduct includes . . . treating litigants or attorneys in a demonstrably egregious and hostile manner"), the comments here do not meet that standard. The statements expressed the judge's frustration with what he perceived, not unreasonably, as complainant's attempts to circumvent procedural rules. The judge did not use rude language or insult the attorneys or litigants present; he simply criticized complainant's conduct during a judicial proceeding—something that judges are generally entitled to do. See In re Complaint of Judicial Misconduct, 761 F.3d 1097, 1099 (9th Cir. 2014) (comments relating only to a

party's "prior conduct" in a judicial proceeding are not misconduct, unless made in a "rude or intemperate" manner). While the comments could have been more measured, they do not amount to judicial misconduct. Because there is no evidence to support complainant's accusation that the judge's comments were demonstrably egregious or hostile, this claim must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 569 F.3d 1093, 1093 (9th Cir. 2009).

Complainant also alleges that the subject judge "treats attorney[s] inconsistently." The only evidence complainant provides in support of this allegation is that the judge failed to chastise complainant's opposing counsel during one of the hearings where the judge criticized complainant. Complainant presents no evidence that opposing counsel engaged in identical—or even comparable—behavior to that of complainant. There is therefore no objectively verifiable proof supporting complainant's allegation of inconsistent treatment, and that claim is accordingly dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 569 F.3d 1093, 1093 (9th Cir. 2009).

**DISMISSED.**