JUDICIAL COUNCIL

OF THE NINTH CIRCUIT

IN RE COMPLAINT OF	No. 14-90140
JUDICIAL MISCONDUCT	**ORDER**

THOMAS, Chief Judge:

Complainant, an attorney and defendant in a bankruptcy adversary proceeding, alleges that a bankruptcy judge improperly enforced an invalid settlement agreement, refused to transfer the case to a proper venue, ordered the deposition of a known criminal, and made various other improper rulings. To the extent complainant challenges the propriety of these rulings, these allegations relate directly to the merits of the judge's rulings in the underlying case, and must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982); Judicial-Conduct Rule 11(c)(1)(B).

Complainant further claims that the judge was biased in favor of opposing counsel based on the judge's alleged relationship with opposing counsel's firm. To support this claim, complainant points to the fact that the judge has served on several boards and committees related to bankruptcy law, some of which included

members of opposing counsel's firm. Complainant also presents evidence that the judge has spoken at various professional and educational programs related to bankruptcy law, some of which were attended or partially sponsored by opposing counsel's firm. Complainant never filed a motion to disqualify the subject judge, but instead raised this allegation of bias during a hearing in the underlying proceedings. In response, the judge acknowledged that she has served on boards with various members of the bankruptcy bar, including some members of opposing counsel's firm, and that she regularly speaks at events related to bankruptcy law.

The Code of Conduct for United States Judges, Canon 4(A), provides that "a judge may speak, write, lecture, teach, and participate in other activities concerning the law," and "may participate in and serve as a member, officer, director, trustee, or nonlegal advisor of a nonprofit organization devoted to the law." "As a judicial officer and a person specially learned in the law, a judge is in a unique position to contribute to the law…[and] is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the law." Code of Conduct for United States Judges, Commentary to Canon 4 (emphasis added). It is not surprising, nor is it evidence of misconduct, that the subject judge—a noted expert on bankruptcy law—may have served on a board of directors with one or more members of opposing

counsel's firm, a bankruptcy boutique firm based in the same region. Moreover, complainant offers no evidence to support his allegation that the judge is a "close and intimate friend" of opposing counsel, and neither adverse rulings nor the judge's membership in an organization devoted to bankruptcy law proves bias or other misconduct. See In re Complaint of Judicial Misconduct, 687 F.3d 1188 (9th Cir. Jud. Council 2012) ("adverse rulings alone do not constitute proof of bias"); Comm. on Codes of Conduct, Advisory Opinion No. 34 ("a judge may properly serve as an officer or member of a board, council or committee of a bar association, subject to the restrictions set forth in Canon 4"). Accordingly, these allegations of bias are dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 650 F.3d 1370, 1371 (9th Cir. Jud. Council 2011); Judicial-Conduct Rule 11(c)(1)(D).

Complainant also alleges that the judge ruled in opposing counsel's favor and spoke at events sponsored by opposing counsel's firm so that the firm would recommend her reappointment to the bankruptcy court. Complainant offers no evidence of any such quid pro quo arrangement. Rather, complainant points to a news posting on a "bankruptcy forum" website, announcing the Ninth Circuit Court of Appeals' invitation for public comment on the subject judge's reappointment. Complainant notes that opposing counsel's firm (along with

several other bankruptcy firms) was a sponsor of the forum, and cites this news posting as proof that the firm "actively solicited comments" to reappoint the judge. However, even if the firm had recommended the judge's reappointment—which is not apparent from the record—it would not prove that the judge solicited recommendations or made any express or implied offer of favorable rulings or speaking engagements in exchange for endorsements. Complainant's allegation that the judge "trad[ed] rulings for recommendations" is based purely on speculation and innuendo, and must be dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 569 F.3d 1093 (9th Cir. Jud. Council 2009)("complainant's vague insinuations do not provide the kind of objectively verifiable proof that we require"); Judicial-Conduct Rule 11(c)(1)(D).

Next, complainant alleges that the judge improperly congratulated the opposing party after ruling in their favor, and made several other comments showing hostility or bias against complainant. A review of the transcript shows that following a hearing where the parties discussed a settlement agreement, the judge thanked both parties for their hard work and efforts, and concluded, "thank you very much, and congratulations, or condolences, as the case may be[.]" These comments do not suggest bias or hostility toward complainant. Similarly, the

other comments cited by complainant, read in context, do not amount to "demonstrably egregious and hostile" treatment. Judicial-Conduct Rule 3(h)(1)(D). For example, complainant selectively quotes statements such as "you have five minutes at the most," and "please sit down," as evidence of hostile treatment. However, a review of the transcript shows that these particular comments were made after complainant had an ample opportunity to argue his position, an argument that stretched over 20 pages of reporter's transcript. As another example, complainant alleges that the judge mocked him by asking "huh?" in response to complainant's argument that he, an experienced attorney represented by counsel, entered a settlement agreement under duress. At most, this comment and others cited by complainant were expressions of frustration or incredulity, which is insufficient to prove bias or other misconduct. See In re Judicial Misconduct, 579 F.3d 1062, 1064 (9th Cir. Jud. Council 2009) ("The transcript…indicates that the judge, while frustrated by the tactics of both parties, remained professional and did not exhibit bias. Allegedly improper statements quoted by complainant were, in context, completely benign"); Larson v. Palmateer, 515 F.3d 1057, 1067 (9th Cir. 2008) ("neither adverse rulings nor impatient remarks are generally sufficient to overcome the presumption of judicial integrity"). In sum, a review of the record belies complainant's claim that the

judge treated him in a demonstrably egregious and hostile manner, and this charge is dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 761 F.3d 1097, 1098–99 (9th Cir. Jud. Council 2014); Judicial-Conduct Rules 3(h)(1)(D), 11(c)(1)(D).

Finally, complainant alleges that the judge committed "judicial perjury" by making a factual finding that, in the underlying bankruptcy case, complainant had submitted unreliable claims "for as large an amount as possible." Complainant argues that he only submitted "low value" claims, and therefore, the judge's factual finding was incorrect and amounted to perjury. Complainant's disagreement with the judge's factual findings is not evidence of "perjury" or misconduct. Rather, this allegation relates directly to the merits of the judge's ruling, and must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982); Judicial-Conduct Rule 11(c)(1)(B).

DISMISSED.