

**FILED**

MAY 19 2015

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

**JUDICIAL COUNCIL  
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF  
JUDICIAL MISCONDUCT**

No. 14-90182

**ORDER**

**THOMAS**, Chief Judge:

Complainant, an attorney in a bankruptcy proceeding, alleges that a bankruptcy judge violated his client's constitutional rights by granting a trustee's ex parte application. This charge 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).

Complainant also contends that the judge made an implied threat to sanction him for filing an appeal. A review of the record shows that the judge ordered complainant to show cause as to why he should not be sanctioned for, inter alia, making frivolous legal arguments, making unsupported factual allegations, and failing to obtain a basic understanding of bankruptcy law and procedure. At the hearing on the order to show cause, the judge indicated that he would reserve jurisdiction to expand the order, following the resolution of complainant's appeal

of a separate order. The record belies complainant's allegation that the judge threatened to sanction him for filing an appeal. Rather, the judge reserved jurisdiction to order disgorgement or sanctions based on complainant's misconduct in the bankruptcy proceedings. Accordingly, complainant's allegations of an improper threat are dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 715 F.3d 747, 749 (9th Cir. Jud. Council 2013); Judicial-Conduct Rule 11(c)(1)(D).

Finally, complainant alleges that in a separate, unrelated bankruptcy case, the judge improperly ordered disgorgement of an attorney's retainer fee. To the extent complainant challenges the judge's disgorgement order, this charge must be dismissed as merits-related. 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 provides no evidence that the judge was motivated by bias or treated counsel in an egregiously hostile manner, and because there is insufficient evidence to raise an inference that misconduct has occurred, this charge must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 552 F.3d 1146, 1147 (9th Cir. Jud. Council 2009).

**DISMISSED.**