FILED

DEC 15 2016

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

JUDICIAL COUNCIL

OF THE NINTH CIRCUIT

IN RE COMPLAINT OF JUDICIAL MISCONDUCT	No. 15-90076 **ORDER**

THOMAS, Chief Judge:

An attorney has filed a complaint of judicial misconduct against a district judge who held her in civil contempt of court during a hearing after she refused to answer the judge's questions about the retainer and settlement agreements she had with her client in a matter pending before the court. Complainant alleges that when United States Marshals removed her from the courtroom, the judge "stood, clapped and laughed." In addition to reviewing the official transcript from the hearing, I conducted a limited inquiry as authorized by Judicial-Conduct Rule 11(b). Upon inquiry, the judge denied this allegation as false and "absurd." The court reporter and opposing counsel, both of whom were present in the courtroom while complainant was escorted by the Marshals, confirmed that the judge did not stand, clap or laugh, or anything of the kind. Accordingly, these allegations are conclusively refuted by objective evidence, and are dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii), (B); In re Complaint of Judicial Misconduct, 583

F.3d 598 (9th Cir. Jud. Council 2009); Judicial-Conduct Rule 11(c)(1)(D).

Further, as Marshals removed complainant from the courtroom, complainant advised that she had an injured shoulder and other medical problems. The record shows that the Marshals took complainant to a hospital for evaluation after she reported chest pains. Complainant alleges that the judge improperly denied her medical attention, but complainant never asked for medical attention while in the courtroom. Complainant only asked the judge to be allowed to leave the courtroom for fresh air. Once in custody, it was within the Marshals' discretion to determine whether medical attention was necessary. Thus, this allegation is also dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant further alleges that the judge improperly held her in contempt, denied her due process, made improper inquiries about her retainer agreement and the settlement agreement, and incorrectly speculated about her client's competence. Upon review of the relevant transcripts, I note that the judge did have serious concerns about how complainant was retained and the amount of work completed to earn the large portion of the settlement funds. It was within the court's province to gather information to assess the fairness and legitimacy of complainant's arrangement with her client. The allegations relate directly to the

judge's rulings and case management decisions and must therefore 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 claims that the judge was biased against her, and that he demeaned and slandered her. By questioning complainant's fee arrangement with her client, complainant believes that the judge was accusing her of taking advantage of a mentally incompetent person and created a false impression that her retainer agreement terms were atypical. A review of the transcripts shows that the judge had several pointed exchanges with complainant; however none of the comments or questions, read in context, amount to "demonstrably egregious and hostile" treatment. Judicial-Conduct Rule 3(h)(1)(D). At most, the comments and questions cited by complainant were expressions of frustration or incredulity, which is insufficient to prove bias or other misconduct. See In re Complaint of Judicial Misconduct, 579 F.3d 1062, 1064 (9th Cir. Jud. Council 2009) ("The page transcript…indicates that the judge, while frustrated by the tactics of both parties, remained professional and did not exhibit bias."); 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 was biased or

treated her in a demonstrably egregious manner, and these charges are dismissed. 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).

Complainant also alleges that the judge chose to hold her in contempt and treated her poorly to retaliate against complainant due to comments that she made about the city's district attorney, who is allegedly a friend of the judge. Upon inquiry, the judge responded that he has only met the district attorney once at a community function, and that the district attorney appeared only once in his court on another matter. Complainant presents no evidence suggesting that the judge somehow acted to benefit the district attorney or retaliated against complainant for any reason. Thus, this allegation is also dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 584 F.3d 1230, 1231 (9th Cir. 2009); Judicial-Conduct Rule 11(c)(1)(D).

Complainant further alleges that the judge inappropriately initiated a phone call to her client's daughter, asking the daughter to appear at a hearing. Ex parte communications are allowed "for scheduling, administrative, or emergency purposes," provided that "the ex parte communication does not address substantive matters and the judge reasonably believes that no party will gain a

procedural, substantive, or tactical advantage as a result of the ex parte communication." See Code of Conduct for United States Judges, Canon 3(A)(4)(b). Complainant does not specify whether that alleged communication was substantive, and has not suggested that such communication hindered her client's case. Because there is no evidence of misconduct, this claim is therefore dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant also claims that the judge disclosed her client's confidential medical records and "humiliated" her client. Complainant does not identify any medical records that were purportedly disclosed. Upon inquiry, the subject judge noted that the court has never seen nor been in possession of any medical records in the case, and thus could not have disclosed them. The judge learned, during a hearing, that a special needs trust had been established for the client and that is when he became concerned about the client's competence and sought to make sure that the client's interests were being adequately protected. Because there is no evidence that misconduct occurred, this allegation is also dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

In an addendum to her complaint, complainant alleges that she heard through "reliable information" that the judge had an affair with a court employee. Complainant offers no objectively verifiable proof to support the allegation, and it

is unclear how such conduct, even if true, would amount to cognizable misconduct under Rule 3(h) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. Accordingly this speculative allegation is dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 583 F.3d 598 (9th Cir. Jud. Council 2009); 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).

Complainant alleges that the judge asked his court reporters to go off the record without alerting counsel, and requested that his court reporters alter transcripts. As part of the Rule 11(b) inquiry, the judge's current court reporter, who has worked with the judge for the past two years and acted as court reporter during the hearings in the underlying case, stated that the judge has never asked her to alter a transcript. The court reporter advised that the judge does go on and off the record during court proceedings, but announces that intention in open court so that he can be heard by the parties in the courtroom (e.g., "we'll go off the record now").

Complainant presented the name of another witness who previously worked at the district court and sometimes acted as a "relief" court reporter for the subject

judge. That former employee was contacted, and she stated that the judge never asked her to go off the record without the parties' knowledge and that she was never asked to alter transcripts. However, the former employee shared that she had "heard things" from others over the years about the judge asking court reporters to go off the record. In response to the inquiry about this specific allegation, the judge noted that after his appointment to the bench, nearly ten years ago, he learned that it was error to go off the record without consent of all counsel, and he stopped that practice long ago.

Complainant further alleges that the hearing transcripts in her case contain inaccuracies. It is the court reporter, not the judge, who prepares the transcript. Even if there are inaccuracies, there is no evidence that the judge ordered them, much less that the judge had an improper motive for doing so. These charges are therefore dismissed as "lacking sufficient evidence to raise an inference that misconduct has occurred." 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D). Further, complainant's request that the hearing transcripts be redacted is denied as this type of relief is not available in misconduct proceedings. See 28 U.S.C. § 354(a)(2); Judicial-Conduct Rule 11(a).

DISMISSED.