

FILED

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 17-90077 and 17-90078

ORDER

THOMAS, Chief Judge:

Complainants, an attorney and a litigant in an adversary proceeding, raise several allegations of misconduct against the bankruptcy judge assigned to the underlying case. To the extent complainants allege that the judge improperly failed to recuse himself, improperly imposed sanctions, or made other improper rulings, such allegations relate directly to the merits of the judge's rulings and must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); In re Complaint of Judicial Misconduct, 647 F.3d 1181 (9th Cir. Jud. Council 2011); In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982); Judicial-Conduct Rule 11(c)(1)(B).

Complainants also allege that the judge was biased in favor of opposing counsel, who worked for the judge's former law firm. Complainants did not raise this issue in the underlying proceedings or move to disqualify the judge on any grounds. There is no evidence that the judge personally knew opposing counsel,

who worked for a different office of the same large law firm. Moreover, adverse rulings, standing alone, are not evidence of bias, see In re Complaint of Judicial Misconduct, 583 F.3d 598 (9th Cir. Jud. Council 2009), and the fact that a judge was formerly associated with a law firm appearing in his court is not, by itself, cause to question the judge's impartiality. See In re Complaint of Judicial Misconduct, No. 13-90073 (9th Cir. Jud. Council, Feb. 26, 2015). Complainants present no objectively verifiable evidence of bias or a disqualifying conflict of interest, and accordingly, these allegations must be dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 828 F.3d 1179, 1180 (9th Cir. Jud. Council 2016); In re Complaint of Judicial Misconduct, 583 F.3d 598 (9th Cir. Jud. Council 2009); Judicial-Conduct Rule 11(c)(1)(D).

Complainants further allege that the judge was hostile toward them, yelled at counsel, ordered counsel to sit down when he attempted to address the court, used an expletive during a hearing, suggested that counsel may have committed malpractice in an unrelated case, and told an attorney who made a special appearance, “don’t come back here.” Read in context, the cited comments were expressions of frustration or incredulity regarding complainants’ arguments, litigation tactics and discovery violations, for which complainants were sanctioned. The judge’s demeanor and remarks—including the isolated use of an

expletive and his opinion that counsel “probably committed malpractice” in another jurisdiction—are not sufficient 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 complainants’ claim that the judge treated them in such an egregious or hostile manner as to constitute misconduct, 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).

Complainants’ request that the judge be sanctioned and removed from the underlying case is denied because this type of relief is not available in misconduct proceedings. See 28 U.S.C. § 354(a)(2); Judicial-Conduct Rule 11(a).

DISMISSED.