

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**

No. 18-90105

ORDER

THOMAS, Chief Judge:

Complainant, a debtor in a bankruptcy case, has filed a complaint of judicial misconduct against a bankruptcy judge of this circuit. Review of this complaint is governed by the Rules for Judicial Conduct and Judicial-Disability Proceedings (“Judicial-Conduct Rules”), the federal statutes addressing judicial conduct and disability, 28 U.S.C. § 351 et seq., and relevant prior decisions of the Ninth Circuit Judicial Council. In accordance with these authorities, the names of complainant and the subject judge shall not be disclosed in this order. See Judicial-Conduct Rule 11(g)(2).

The Judicial Conduct and Disability Act provides a remedy if a federal judge “has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts.” 28 U.S.C. § 351(a). A chief judge may dismiss a complaint if, following review, he or she finds it is not cognizable under the statute, is directly related to the merits of a decision or procedural ruling,

or is frivolous or lacks sufficient evidence to raise an inference of misconduct.

See 28 U.S.C. § 352(b)(1)(A)(i)-(iii). Judicial misconduct proceedings are not a substitute for the normal appellate review process, and may not be used to seek reversal of a judge's decision, to obtain a new trial, or to request reassignment to a different judge.

Complainant alleges that the judge mocked complainant's business operations at the end of a telephonic hearing, when the judge thought the call had terminated. Complainant acknowledges that the audio of the hearing does not contain the alleged mocking comments and laughter of the judge and his staff, which complainant contends occurred for about five to ten seconds after the hearing and audio tape concluded. Pursuant to a limited inquiry under Judicial-Conduct Rule 11(b), both the judge and staff present for the hearing denied that complainant or his business were mocked, and denied laughing at complainant. Another recording of this hearing does not exist. As such, this allegation is dismissed as unfounded and conclusively refuted by objective evidence. 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, complainant alleges that the judge improperly expressed an interest in converting the Chapter 12 proceedings into Chapter 7 proceedings despite the fact that no creditor asked for a conversion. Because the complaint fails to allege conduct “prejudicial to the effective and expeditious administration of the business of the courts,” this charge is dismissed. See 28 U.S.C. § 351(a); In re Complaint of Judicial Misconduct, 726 F.3d 1060, 1062 (9th Cir. Jud. Council 2013) (“Because complainant’s charges wouldn’t constitute misconduct even if true, the complaint is dismissed as groundless”); Judicial-Conduct Rules 3(h), 11(c)(1)(A).

DISMISSED.