

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. 18-90156

ORDER

THOMAS, Chief Judge:

Complainant, an attorney and defendant in a bankruptcy adversary proceeding, has filed a complaint of judicial misconduct against a bankruptcy judge. 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 improperly excluded evidence, failed to recuse herself, accepted an invalid settlement agreement, and made various other improper rulings in the underlying case. These 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).

Complainant also alleges that the judge is biased and retaliated against complainant for filing a successful appeal. However, adverse rulings, standing alone, are not proof of bias or other misconduct. See In re Complaint of Judicial Misconduct, 900 F.3d 1163, 1166 (9th Cir. Jud. Council 2018) (“adverse rulings are not proof of misconduct”); In re Complaint of Judicial Misconduct, 687 F.3d 1188 (9th Cir. Jud. Council 2012) (“adverse rulings alone do not constitute proof of bias”). To the extent complainant alleges that the judge is biased due to her

alleged friendship with opposing counsel or the bankruptcy bar in general, these allegations were dismissed in a previous order, see In re Complaint of Judicial Misconduct, No. 14-90140 (9th Cir. Jud. Council Aug. 17, 2015), making further action on this charge unnecessary. See 28 U.S.C. § 352(b)(2); In re Complaint of Judicial Misconduct, 563 F.3d 853, 854 (9th Cir. Jud. Council 2009).

Complainant further alleges that the judge treated him in an egregious and hostile manner, and cites a particular hearing as evidence. A review of the underlying record belies this claim. The judge “did not use demeaning language or heap abuse on anybody,” In re Judicial Misconduct, 906 F.3d 1167, 1170 (9th Cir. Jud. Council 2018), or otherwise treat complainant in any manner that would amount to misconduct. To the contrary, the hearing transcript reveals that the judge, while entering several rulings against complainant, remained professional and respectful throughout the proceeding. By contrast, complainant made several personal attacks and used inflammatory language at the hearing, at one point invoking the Holocaust and comparing court-appointed trustees to Nazis. Read in context, the judge’s statement that she was concerned for complainant’s mental state was not egregious or hostile, but an appropriate response to complainant’s conduct at the hearing. Accordingly, these allegations are dismissed as unfounded and refuted by objective evidence. See 28 U.S.C. § 352(b)(1)(A)(iii), (B); In re

Complaint of 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”); Judicial-Conduct Rule 11(c)(1)(D).

Complainant next alleges that the judge has had improper ex parte communications with litigants about pending cases. In support of this allegation, complainant submits what appears to be an email correspondence between the judge and an attorney (who is not involved in the underlying case), in which the judge suggests “getting together soon,” and, in response to the attorney’s inquiry, suggests that she might be able to recommend an attorney for a bankruptcy appeal. This is not evidence of an ex-parte communication. See William Jefferson & Co., Inc. v. Board of Assessment and Appeals No. 3 ex rel. Orange County, 695 F.3d 960, 965-66 (9th Cir. 2012) (“Ex parte contacts . . . are contacts between the adjudicator and an interested party, of which the other party is unaware”) (emphasis added). Nor is it inappropriate for a judge to recommend an attorney to an acquaintance. Cf. Comm. on Codes of Conduct, Advisory Opinion No. 73

(“When a judge is personally aware of facts or circumstances that would facilitate an accurate assessment of the individual under consideration, a judge may properly communicate that knowledge, and his or her opinions based thereon, to those responsible for making decisions concerning the applicant”). Complainant’s vague and speculative allegations that the judge has engaged in “insider dealing,” fraud, or improper communications with litigants or opposing counsel are 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) (“claimant’s vague insinuations do not provide the kind of objectively verifiable proof that we require”); Judicial-Conduct Rule 11(c)(1)(D).

Complainant has now filed two misconduct complaints against the subject judge, raising allegations that have been dismissed as merits-related, duplicative, or unfounded. Complainant is cautioned that a “complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints.”

Judicial-Conduct Rule 10(a); see also In re Complaint of Judicial Misconduct, 552 F.3d 1146, 1148 (9th Cir. Jud. Council 2009).

DISMISSED.