

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. 18-90157

ORDER

THOMAS, Chief Judge:

Complainant, a debtor in a bankruptcy 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 converted the case to a Chapter 11 proceeding, improperly appointed a particular trustee, improperly removed complainant as a debtor-in-possession, and made various other incorrect rulings. 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 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 was biased and ruled in favor of the trustee and his associates in order to "line their pockets" with proceeds from the estate. However, adverse rulings are not proof of bias or conspiracy, and complainant provides no objectively verifiable evidence to support these allegations, which are dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 650 F.3d 1370, 1371 (9th Cir. Jud.

Council 2011) (“adverse rulings do not prove bias or conspiracy”); Judicial-Conduct Rule 11(c)(1)(D).

Complainant further alleges that the judge made hostile or biased remarks toward him. Specifically, complainant alleges that the judge wrote in an unspecified order that “the debtor is babbling again,” and stated at a particular hearing that he would “have to call for a marshal.” As to the first statement, complainant does not specify the date or docket entry of the judge’s order; however, even assuming the judge made this comment, it would not amount to “demonstratively egregious and hostile treatment” or any other form of misconduct. Judicial-Conduct Rule 3(h)(1)(D). As to the second statement, a review of the record shows that at the hearing, the judge stated he had already read and considered complainant’s written arguments, and would allow complainant an additional opportunity to be heard, but would cut complainant short if he got off course or made arguments based on hearsay or speculation. As warned, complainant was cut off by the judge after giving improper argument. Complainant then interrupted the judge as he was entering his ruling, and the judge stated, “if you press this, we’re going to have a marshal come up.” Viewed in context, the judge’s comments were appropriate, and did not amount to egregious and hostile treatment or other misconduct. Accordingly, these

allegations must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 761 F.3d 1097, 1099 (9th Cir. Jud. Council 2014)

(“Misconduct includes treating litigants or attorneys in a demonstrably egregious and hostile manner. The comments here do not meet that standard. The judge did not use demeaning language or heap abuse on anybody”) (internal quotations omitted); Judicial-Conduct Rules 3(h)(1)(D); 11(c)(1)(A), (D).

To the extent complainant raises allegations against the bankruptcy trustee, such allegations are dismissed because this misconduct procedure applies only to federal judges. See In re Complaint of Judicial Misconduct, 632 F.3d 1287, 1288 (9th Cir. Jud. Council 2011); Judicial-Conduct Rule 4.

DISMISSED.