

FILED

May 02 2024

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 23-90148

ORDER

MURGUIA, Chief Judge:

Complainant, an attorney, 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 bankruptcy judge demonstrated bias by routinely denying hearings on confirmation of debtors' initial plans, including the one filed by complainant's client. Here, an objection was made to the debtor's plan and the bankruptcy judge ruled on the debtor's plan without a hearing because "oral argument will not assist in the decision-making process or resolution of the objection."

To the extent complainant challenges the judge's decision to rule on the debtor's plan absent a hearing, this allegation relates directly to the merits of the judge's decision and must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii) (listing reasons the chief judge may decide to dismiss the complaint, including claims directly related to the merits of a decision); In re Complaint of Judicial Misconduct, 838 F.3d 1030 (9th Cir. Jud. Council 2016) (dismissing allegations that a district judge made various improper rulings in a civil case as relating to the merits); Judicial-Conduct Rule 11(c)(1)(B).

To the extent complainant alleges that the judge's practice of resolving

objections without hearings demonstrates bias against debtors generally, he fails to show that the judge harbored an improper motive or that the practice is “prejudicial to the effective and expeditious administration of the business of the courts,” as required by Judicial-Conduct Rule 4(a)(1). Accordingly, the allegation is dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii) (listing reasons the chief judge may decide to dismiss the complaint, including claims that are lacking sufficient evidence to raise an inference that misconduct has occurred); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.