

MAR 11 2009

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 07-89121 and 07-89131

ORDER

KOZINSKI, Chief Judge:

Two misconduct complaints have been filed against a bankruptcy judge. Complainant, a pro se debtor, filed for bankruptcy. The subject judge was assigned to the matter.

Complainant alleges that the judge should have recused himself. The judge requested and was granted reassignment of the case shortly after complainant's first misconduct complaint was filed. Intervening events therefore make further action on this charge unnecessary. See 28 U.S.C. § 352(b)(2).

Complainant alleges that a conflict of interest existed because the creditor's attorneys were "prominent" in the judge's courtroom. The fact that an attorney or law firm appears frequently before a judge does not, by itself, create a conflict of interest or suggest favoritism on the judge's part. Because there isn't sufficient evidence to raise an inference that misconduct occurred, this charge must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Misconduct Rule 4(c)(3).

Complainant alleges that the judge ignored his objections to the creditor's proof of claim. But the judge addressed complainant's objections at a hearing, so this allegation is dismissed as lacking factual foundation. See 28 U.S.C. § 352(b)(1)(B).

Complainant alleges that the judge misapplied the law and made numerous improper rulings. These charges relate directly to the merits of the judge's rulings and must therefore be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Misconduct Rule 4(c)(1). A misconduct complaint is not a proper vehicle for challenging the merits of a judge's rulings. See In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

Complainant alleges that the judge displayed prejudice and poor judicial temperament during hearings. A review of the hearing transcripts reveals that the judge's comments, although displaying some frustration or irritation, do not suggest prejudice or constitute misconduct. Cf. Liteky v. United States, 510 U.S. 540, 555-56 (1994). This charge is dismissed as lacking factual foundation. See 28 U.S.C. § 352(b)(1)(B).

Complainant alleges that the judge engaged in an ex parte communication with the trustee's counsel. But the fax from the trustee's counsel to the judge's chambers regarding the scheduling of a settlement conference—on which all

parties were copied—does not constitute an improper ex parte communication regarding the merits or procedures affecting the merits of the proceeding. See Canon 3A(4) of the Code of Conduct for United States Judges. This charge must be dismissed because the charged behavior does not amount to “conduct prejudicial to the effective and expeditious administration of the business of the courts.” See 28 U.S.C. § 351(a); Misconduct Rule 4(c)(2)(A).

Complainant alleges that the judge improperly required a settlement conference, “forcing [him] into a settlement without a hearing.” Local rules allow the court, on its own initiative or at the request of any party, to order a settlement conference. Even if complainant felt that he was unfairly required to participate in a settlement conference, he was not forced to agree to the settlement. Moreover, a hearing was held before the judge approved the settlement agreement. This charge is therefore dismissed as lacking factual foundation. See 28 U.S.C. § 352(b)(1)(B).

Complainant alleges that the judge violated the confidentiality requirements of the misconduct complaint procedure by stating in the request for reassignment that “the debtor had filed a complaint of judicial misconduct.” The Misconduct Rules permit a judge to acknowledge that he is the judge referred to in chief judge or judicial council orders, and also state that “it is not contemplated that a complainant should be barred from disclosing the fact that a complaint was filed or

the nature of his or her complaint.” Misconduct Rule 16; Commentary on Misconduct Rule 16. Although the Misconduct Rules do not directly address whether a judge may acknowledge that he is the subject of a complaint by a particular litigant, these exceptions to the confidentiality rule suggest that the judge’s disclosure here did not amount to misconduct. This charge is dismissed because the charged behavior does not amount to “conduct prejudicial to the effective and expeditious administration of the business of the courts.” See 28 U.S.C. § 351(a); Misconduct Rule 4(c)(2)(A).

Complainant alleges that the judge made “prejudicial and maligning” statements in the request for reassignment. A review of that document does not reveal any statements that might be considered inappropriate. This charge is dismissed as lacking factual foundation. See 28 U.S.C. § 352(b)(1)(B).

Complainant appears to allege that the judge’s request for reassignment and the order reassigning the case should not have been sent to all of the people on the mailing list. It is normal court practice for the people on the mailing list to be notified of filings in the case. Complainant offers no explanation for why this procedure was improper in this instance. This charge is dismissed because the charged behavior does not amount to “conduct prejudicial to the effective and expeditious administration of the business of the courts.” See 28 U.S.C. § 351(a);

Misconduct Rule 4(c)(2)(A).

Complainant's allegations against the creditor and the trustee are dismissed because this misconduct complaint procedure applies only to federal judges. See Misconduct Rule 1(d).

DISMISSED.