

JAN 28 2009

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 08-89047

ORDER

KOZINSKI, Chief Judge:

A misconduct complaint has been filed against a bankruptcy judge. Complainant was a creditor in a bankruptcy proceeding to which the subject judge was assigned.

Complainant alleges that the judge failed to disclose that he was formerly a named partner of the law firm representing the debtor. The fact that a judge was formerly associated with a law firm appearing in his court is not, by itself, cause to question the judge's impartiality. 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 also alleges that a conflict of interest existed because the judge was still affiliated with the law firm representing the debtor. To support this allegation, complainant points to a mailing label affixed to a box used by the firm

that lists the name of the firm as it stood when the judge was a named partner. A limited inquiry revealed that the firm ceased using the judge's name altogether when the judge was appointed to the bankruptcy court, and that the mailing label was generated by a third-party vendor that hadn't updated its records to reflect the current firm name. The mailing label, without more, is not sufficient to show that the judge was still affiliated with or had a continuing financial interest in the firm. Because it is clear that no misconduct occurred, this charge must be dismissed.

See 28 U.S.C. § 352(b)(1)(A)(iii); Misconduct Rule 4(c)(3).

Complainant further alleges that the judge was biased in favor of the debtor and engaged in improper ex parte communications with the debtor's counsel. But complainant hasn't included any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) supporting these allegations. Because there isn't sufficient evidence to raise an inference that misconduct occurred, these charges must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Misconduct Rule 4(c)(3); Commentary on Misconduct Rule 4.

DISMISSED.