

DEC 02 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALSJUDICIAL COUNCIL
OF THE NINTH CIRCUIT

IN RE COMPLAINT OF JUDICIAL MISCONDUCT

No. 07-89145

ORDER**KOZINSKI**, Chief Judge:

A complaint of misconduct has been filed against a bankruptcy judge. Complainants, who lived together but were not married, filed for bankruptcy. Their proceedings were assigned to the subject judge. After a hearing, the judge ordered the sale of complainants' property by auction.

Complainants allege that the judge improperly processed their bankruptcies together. The record demonstrates that the judge ordered complainants' bankruptcy cases to be consolidated substantively and administratively, and treated them as separate but consolidated cases. Therefore, this charge must be dismissed as lacking factual foundation. See 28 U.S.C. § 352(b)(1)(B). To the extent that complainants challenge the judge's decision to consolidate their cases, the charge must be dismissed because it relates directly to the merits of the judge's ruling. 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).

Complainants allege that the judge ignored various motions and requests. But they haven't provided 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).

Complainants allege that the judge failed to give adequate notice of a hearing and abused his discretion by denying their motion for a continuance. Complainants also allege that the judge improperly allowed a quick sale of their property. These charges must be dismissed because they relate directly to the merits of the judge's rulings. See 28 U.S.C. § 352(b)(1)(A)(ii); Misconduct Rule 4(c)(1).

Complainants further allege that the judge committed fraud when he approved the use of an auctioneer who wasn't neutral. But complainants haven't provided any objectively verifiable proof establishing that the judge knew of the auctioneer's prior connection to them. 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). To the extent that complainants disagree with the judge's decision to allow the auction of their property to stand and to compensate the auctioneer for his services, this charge relates directly to the merits of the judge's ruling and must therefore be dismissed.

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

Complainants' allegations against the trustee and auctioneer must be dismissed because this complaint procedure applies only to federal judges. See Misconduct Rule 1(d).

DISMISSED.