

APR 28 2009

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

IN RE COMPLAINT OF JUDICIAL MISCONDUCT

No. 08-90044

ORDER**KOZINSKI**, Chief Judge:

A misconduct complaint has been filed against a bankruptcy judge.

Complainant, an attorney, appeared in a bankruptcy proceeding before the subject judge.

Complainant alleges that the judge treated him disrespectfully during a hearing. A careful review of the hearing transcript discloses that the judge's isolated comments, while reflecting some frustration or irritation, do not rise to the level of judicial misconduct. Cf. Liteky v. United States, 510 U.S. 540, 555-56 (1994). Ideally, judicial officers should remain calm and courteous regardless of provocation. However, judges are human and thus subject to personal and professional pressures that sometimes make it difficult to maintain a perfect demeanor. The judge here has acknowledged that his choice of words was not ideal, which is as much as one can fairly say about this isolated incident. Absent a pattern of intemperate or discourteous conduct, or some proof of personal animus against the individual who is the subject of the remarks—neither of which is

present here—a minor departure from ideal bench demeanor 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); Judicial-Conduct Rule 11(c)(1)(A).

Complainant also alleges that the judge was improperly influenced by certain local practitioners who appear frequently in the judge’s courtroom. But complainant provides no objectively verifiable proof to support this speculative allegation. Because there is no evidence that misconduct occurred, this charge must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.