

FEB 13 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT****IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 07-89074

ORDER**KOZINSKI**, Chief Judge:

A misconduct complaint has been filed against a magistrate judge. Complainant, a pro se prisoner, filed a civil rights action in district court. The matter was referred to the subject judge.

Complainant alleges that the judge improperly issued a Report and Recommendation recommending that the district court grant summary judgment in favor of defendants without first resolving complainant's motion for a continuance to permit additional discovery. Complainant's motion was never docketed. Even if failing to rule on the motion was an oversight on the judge's part, it doesn't 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 has filed objections to the Report and Recommendation raising his concern regarding the motion, and the district court can remedy the situation if appropriate.

Complainant's allegations against court staff responsible for docketing must be dismissed because this misconduct complaint procedure applies only to federal judges. See Misconduct Rule 1(d).

DISMISSED.