

JUDICIAL COUNCIL
OF THE NINTH CIRCUIT

FILED

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CATHY A. CATTERSON, CLERK
U. S. COURT OF APPEALS

IN RE COMPLAINT OF
JUDICIAL MISCONDUCT

No. 07-89085

MEMORANDUM AND ORDER

KOZINSKI, Chief Judge:

A complaint of misconduct has been filed against a magistrate judge of this circuit. Administrative consideration of such complaints is governed by the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability (Misconduct Rules), issued pursuant to the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980. 28 U.S.C. §§ 351–364.

Complainant, a pro se prisoner, alleges that the judge screened and dismissed his second amended complaint when the judge had no jurisdiction to do so, because a motion for the judge's recusal was pending. He also alleges that the judge directed an officer of the court to delay service of the judge's Findings and Recommendations in order to interfere with complainant's ability to respond, and he further alleges that the judge conspired with prison employees to interfere with his access to the prison's legal research database. The complainant also claims

unreasonable delay in the screening of the second amended complaint, and that the judge made false factual statements in Findings and Recommendations regarding the cause of the delay.

Although the judge dismissed the second amended complaint after complainant filed the motion for recusal, the judge's action does not constitute misconduct because, as the district judge assigned to the case determined, the motion for recusal was legally insufficient. See Toth v. Trans World Airlines, Inc., 862 F.2d 1381, 1387–88 (9th Cir. 1988) (a judge need not transfer the motion to another judge and “proceed no further” in the case where the motion for recusal is legally insufficient); Role v. Eureka Lodge No. 434, 402 F.3d 314, 318 (2d Cir. 2005) (per curiam). A complaint must be dismissed if, even when assuming that all of the allegations are true, the charged behavior does not amount to “conduct prejudicial to the effective and expeditious administration of the business of the courts” Misconduct Rule 4(c)(2)(A); 28 U.S.C. § 351(a).

Complainant failed to include any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) supporting his allegations that the judge was involved in a delay in service or a conspiracy with prison employees. Furthermore, the docket shows that the judge granted complainant's request for an extension of time to respond to the Findings and Recommendations.

Conclusory charges that are wholly unsupported, as here, must be dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Misconduct Rule 4(c)(3).

Complainant cannot challenge an alleged delay under the misconduct procedures unless the circumstances are extraordinary, as “where the delay is habitual, is improperly motivated or is the product of improper animus or prejudice toward a particular litigant, or, possibly, where the delay is of such an extraordinary or egregious character as to constitute a clear dereliction of judicial responsibilities.” Commentary on Misconduct Rule 1. Such is not the case here. Part of the delay is attributable to complainant’s appeal. Complainant claims that the judge falsely stated that the case had been on appeal until December 2006, but the judge’s statement is correct. The court of appeals docket sheet discloses that the mandate did not issue until December 2006. The remaining delay is not extraordinary or egregious.

DISMISSED.