

FILED

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 07-89104

MEMORANDUM AND ORDER

KOZINSKI, Chief Judge:

A complaint of misconduct has been filed against a district judge and a magistrate judge of this circuit. Complainant, a pro se litigant, filed a civil rights suit in district court. The subject district judge initially declined to have the case transferred to him, but he later accepted the transfer, as the case raised questions similar to those in a case previously filed by complainant that had been assigned to the district judge. The previously-filed case was referred to the subject magistrate judge, but the transferred case was not.

A few days after the transfer, complainant filed a notice of appeal challenging the transfer order. The district judge then scheduled a hearing for the following week to consider defendants' pending motion to dismiss. Complainant didn't appear at the hearing, and the judge granted the motion and dismissed with prejudice. The court of appeals subsequently dismissed the appeal, because "the order challenged in the appeal [was] not final or appealable."

To the extent complainant alleges that the transfer order was contrary to law and inconsistent with the judge's earlier order declining the transfer, the charge is dismissed because it is directly related to the merits of the judge's ruling in the underlying case. 28 U.S.C. § 352(b)(1)(A)(ii); Rule 4(c)(1) of the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability (Misconduct Rules). The procedures for judicial misconduct are not a proper venue for challenging a judge's rulings. See In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

Complainant alleges that the district judge concealed or destroyed the notice of appeal challenging the transfer order. This charge is dismissed for lack of a factual foundation, as the public record clearly shows that the notice was docketed in a timely manner and transmitted to the court of appeals. 28 U.S.C. § 352(b)(1)(B).

Complainant alleges that the district judge proceeded without jurisdiction while the appeal was pending, and should have waited 30 days after the transfer order to give complainant time to file an appeal. The district judge correctly perceived that the transfer order was not an appealable order, and the judge therefore had jurisdiction to proceed with the case. See Nascimento v. Dummer, 508 F.3d 905, 908 (9th Cir. 2007).

Complainant also alleges that his cases were referred to a magistrate judge even though he didn't consent, but consent is not required under 28 U.S.C. § 636 for many pretrial matters. These charges are therefore dismissed, because the charged behavior wasn't improper and doesn't amount to "conduct prejudicial to the effective and expeditious administration of the business of the courts."

Misconduct Rule 4(c)(2)(A); see 28 U.S.C. § 351(a).

About a week after the district court's hearing, the district judge received a letter from complainant, which was addressed to the clerk of court and the Standing Committee on Discipline (of attorneys). The letter contained allegations regarding an attorney who is both a defendant and counsel to other defendants in the underlying case, and allegations that the attorney-defendant influenced the subject magistrate judge to convince the district judge to accept the transfer. The district judge rejected the letter, because it did not comply with the local rule prohibiting parties from writing letters to the judge assigned to their case.

Prompted by a limited inquiry into this complaint, the district court's clerk of court determined that complainant's letter had not been forwarded to the Standing Committee—although another letter from complainant sent a few weeks after the first letter, in which complainant alleged that the district judge or a clerk had prevented the Standing Committee from receiving his first letter, had been

timely forwarded to the Committee. This appears to have been the result of an oversight. The clerk of court therefore forwarded complainant's first letter to the Standing Committee for its consideration.

Complainant alleges that the district judge intercepted the letter to the Standing Committee because it contained allegations about the attorney-defendant and the judges. Having determined that the letter was misdirected to the judge, the clerk of court forwarded complainant's letter to the Standing Committee on February 4, 2008. To the extent that the charged behavior stems from an error by the clerk's office staff, it is dismissed because this complaint procedure applies only to federal judges—not to court staff. Misconduct Rule 1(d). Complainant has presented no credible evidence that the subject district judge was in any way involved. In addition, the charge is concluded because corrective action has been taken. 28 U.S.C. § 352(b)(2).

Complainant also alleges that the transfer was improperly caused by the intervention of the magistrate judge, that the judges and the defendant-attorney conspired to transfer the case and that the attorney bribed the judges. He also alleges that similar collusion caused one of his 2006 cases to be assigned to the subject judges. In the 2006 case, the court issued a notice of clerical error, stating that the incorrect judge's initials had been indicated for the case and that it was

reassigned to the subject judge. Complainant hasn't included any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) supporting these allegations, so these charges are dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Misconduct Rule 4(c)(3).

DISMISSED in part and CONCLUDED in part.