

DEC 18 2008

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

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| IN RE COMPLAINT OF JUDICIAL MISCONDUCT |
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No. 07-89139

ORDER**KOZINSKI**, Chief Judge:

A complaint of misconduct has been filed against a magistrate judge. Complainant, a pro se prisoner, filed a civil rights action in district court.

Complainant alleges that his case was referred to the magistrate judge without his consent. However, a litigant's consent is not generally a prerequisite for referring many pretrial matters to a magistrate judge. See 28 U.S.C. § 636(b)(1). This charge must be dismissed because the charged behavior 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); Misconduct Rule 4(c)(2)(A).

Complainant alleges that the magistrate judge ruled on motions that must be decided by an Article III judge. This charge relates directly to the merits of the judge's rulings and must therefore be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Misconduct Rule 4(c)(1). A misconduct complaint is not the 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).

Complainant also alleges that the magistrate judge applied a different standard to his case because of his status as a pro se prisoner. But he hasn't included any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) supporting this allegation of bias. 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).

Complainant further alleges that the magistrate judge delayed the timely resolution of his case. A limited inquiry revealed that the delay in screening complainant's complaint was due to a court-wide backlog of cases. Delay is not the proper subject of a misconduct complaint unless the circumstances are extraordinary, such 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.

Finally, complainant alleges that he repeatedly requested, but never received, a copy of the docket sheet. This charge must be dismissed because it relates to

actions taken by court staff, and this misconduct complaint procedure applies only to federal judges. See Misconduct Rule 1(d).

DISMISSED.