

JUDICIAL COUNCIL
OF THE NINTH CIRCUIT

JUN 16 2011

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

IN RE COMPLAINT OF
JUDICIAL MISCONDUCT

Nos. 11-90066 & 11-90085

ORDER

KOZINSKI, Chief Judge:

A pro se litigant filed two misconduct complaints alleging that the magistrate judge assigned to his civil case should recuse because complainant didn't consent to the referral. But a litigant's consent is not a prerequisite for referring many pretrial matters to a magistrate judge, and the docket shows that the magistrate judge did not make any rulings that required party consent. See 28 U.S.C. § 636(b)(1). Allegations that the magistrate judge erred in failing to recuse must generally be dismissed as merits-related. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B); In re Complaint of Judicial Misconduct, 579 F.3d 1062, 1064 (9th Cir. Jud. Council 2009). Further, a failure to recuse may constitute misconduct only if a judge "deliberately failed to [recuse] for illicit purposes," which was not shown here. Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice 146 (2006), available at <http://supremecourt.gov/publicinfo/breyercommitteereport.pdf>.

Complainant also alleges that the magistrate judge had ex parte

communications with defendants' attorney at a hearing. The docket shows that complainant received notice of this hearing but chose not to attend. Proceeding with the scheduled hearing without complainant did not amount to ex parte communications, so this charge must be dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.