

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. 07-89053

MEMORANDUM AND ORDER

KOZINSKI, Chief Judge:

A complaint of misconduct and a supplemental complaint have been filed against a magistrate judge of this circuit. Complainant, a prisoner, filed a civil rights suit in district court. He declined to have a magistrate judge conduct all of the proceedings under 28 U.S.C. § 636(c)(1). The magistrate judge issued Findings and Recommendations, recommending dismissal for failure to state a claim. The district judge assigned to the case adopted the Findings and Recommendations, and dismissed the case. After dismissal, complainant filed three motions, two of which were denied and one of which was placed in the file and disregarded. His appeal of the dismissal order was dismissed for failure to prosecute.

Complainant alleges that the magistrate judge acted “outside the scope of his designated jurisdiction” by issuing Findings and Recommendations, because complainant declined to have the magistrate judge conduct all the proceedings.

Complainant misreads the law. His refusal to allow the magistrate judge to conduct all the proceedings and enter judgment under 28 U.S.C. § 636(c)(1), did not bar the magistrate judge from exercising his regular authority under 28 U.S.C. § 636(b) to provide proposed findings of fact and recommendations to the assigned district judge. This charge is dismissed because the charged behavior does not amount to “conduct prejudicial to the effective and expeditious administration of the business of the courts.” Rule 4(c)(2)(A) of the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability (Misconduct Rules); see 28 U.S.C. § 351(a).

Complainant alleges that the magistrate judge’s factual findings and reliance on specific case law were incorrect. This charge is dismissed, as it’s directly related to the merits of the judge’s Findings and Recommendations in the underlying case. 28 U.S.C. § 352(b)(1)(A)(ii); Misconduct Rule 4(c)(1). 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 magistrate judge’s actions in the case were based on bias or prejudice against prisoners with psychiatric disabilities. This charge is dismissed because complainant hasn’t included any objectively

verifiable proof (for example, names of witnesses, recorded documents or transcripts) supporting the allegation, and his disagreement with the judge's factual findings is not sufficient evidence to raise an inference that misconduct occurred. 28 U.S.C. § 352(b)(1)(A)(iii); Misconduct Rule 4(c)(3).

Complainant alleges that the magistrate judge improperly proceeded without first addressing complainant's "motion to declare bias or prejudice of judge" pursuant 28 U.S.C. § 144. Complainant's motion was moot when filed, because the magistrate judge had already discharged his responsibilities in the case by issuing Findings and Recommendations. Although the magistrate judge did issue an order after dismissal, this order had no substantive effect but was issued simply, as a courtesy, to inform complainant that the case was closed. The failure to address complainant's section 144 motion therefore does not 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).

Complainant alleges that three motions filed after dismissal were improperly disregarded by the magistrate judge. However, the district judge chose to deal with these motions, and not to refer them to the magistrate judge. The magistrate judge therefore had no authority to address these motions, see 28 U.S.C. § 636(b),

so he didn't commit misconduct by disregarding them.

DISMISSED.