

FILED

MAY 30 2008

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 07-89106

ORDER

KOZINSKI, Chief Judge:

A complaint of misconduct has been filed against a magistrate judge of this circuit. Complainant, a pro se litigant, challenged a search warrant issued by the subject judge.

Complainant alleges that the judge issued the search warrant in violation of Federal Rule of Criminal Procedure 41, because the judge did not file the Application and Affidavit for Search Warrant until after the search warrant was executed. Rule 41 does not require a judge to file the affidavit prior to the execution of the search warrant. See Fed. R. Crim. P. 41(d). This charge is therefore 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 judge violated Federal Rule of Criminal Procedure 41 by failing to take recorded testimony from the affiant. Rule 41 doesn't require a judge to take recorded testimony for every search warrant application; it only requires recorded testimony when the judge dispenses with a written affidavit, see Fed. R. Crim. P. 41(d)(2), or relies on information communicated by telephone or by electronic means, see id. 41(d)(3). Here, the judge relied on the written affidavit, and the information was communicated to him in his presence. This charge is therefore dismissed because 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); see 28 U.S.C. § 351(a).

To the extent that complainant is challenging the validity of the warrant itself, the charge must be dismissed. 28 U.S.C. § 352(b)(1)(A)(ii); Misconduct Rule (4)(c)(1). A complaint of judicial misconduct is not a proper vehicle for challenging a judge's decisions. See In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

DISMISSED.