

AUG 21 2008

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

**JUDICIAL COUNCIL  
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF  
JUDICIAL MISCONDUCT**

No. 07-89111

**ORDER**

**KOZINSKI**, Chief Judge:

A misconduct complaint has been filed against a district judge of this circuit. Complainant, a pro se litigant, filed a civil case in federal district court. The judge denied complainant's request to proceed in forma pauperis for failure to state a cognizable claim and dismissed the complaint with leave to amend. When complainant didn't file an amended complaint, the judge dismissed the case for failure to prosecute.

Complainant charges the judge with racial bias because he did not order the defendant to answer the complaint. But complainant failed to include any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) supporting her allegation of racial bias. Nor does a review of the judge's order dismissing the complaint disclose evidence of bias. The docket indicates that the defendant was not required to respond to the complaint because it had not been served with a summons. See Fed. R. Civ. P. 4(c). The court will

normally issue a summons only when the plaintiff pays the filing fee or is granted in forma pauperis status. The court here denied in forma pauperis status and complainant never paid the filing fee; nor did she file an amended complaint. Because there isn't sufficient evidence to raise an inference that misconduct occurred, these charges must be dismissed. Misconduct Rule 4(c)(3)(C); see 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant also alleges that the judge "play[ed] favoritism" by cancelling a case management conference without notifying her, so that she came to court only to discover that the conference would not be held. In an order dated one day prior to the scheduled case management conference, the judge dismissed the complaint and vacated the conference. This order was itself notice to the parties that the case management conference had been cancelled. And, as complainant admits, she couldn't be reached by telephone because she didn't provide her telephone number to the court. Because this charge lacks factual foundation, it must be dismissed. Misconduct Rule 4(c)(3)(C); see 28 U.S.C. § 352(b)(1)(B).

Complainant further alleges that the judge should not have required her to provide a telephone number. She states that she did not want to provide one due to harassment from the defendant and others. She also alleges that it was wrong for the judge to give her a "short time" to amend her complaint when the judge knew

she had glaucoma. But the judge gave complainant 29 days in which to amend, and she did not request an extension. The request for a telephone number and the grant of a 29-day period in which to amend the complaint were both reasonable. These charges 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.” Misconduct Rule 4(c)(2)(A); see 28 U.S.C. § 351(a).

Finally, complainant claims that she received a notice from the court stating that she owed a filing fee even though she filed a fee waiver. But the judge denied complainant’s application to proceed in forma pauperis, and she was therefore required to pay the court’s normal filing fee. See 28 U.S.C. § 1914(a) (“the clerk of each district court shall require the parties instituting any civil action . . . to pay a filing fee of \$350”). Complainant’s confusion regarding the filing fee may be due in part to a clerical error: The first letter from the clerk of court informing her that the filing fee was past due used an inapposite form letter pertaining to seamen’s suits. However, the second notice sent to complainant accurately stated that payment was due because her application to proceed in forma pauperis was denied. This charge must be dismissed because the behavior complained of does not constitute “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).

**DISMISSED.**