

OCT 01 2008

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 07-89132

ORDER

KOZINSKI, Chief Judge:

A complaint of misconduct has been filed against a district judge and a magistrate judge. Complainant served as next friend to an incompetent pro se plaintiff in a civil case, to which the subject judges were assigned.

Complainant alleges that the judges failed to appoint counsel for the plaintiff after she filed a request for a representative pursuant to Federal Rule of Civil Procedure 17(c). But Rule 17(c) doesn't authorize the appointment of counsel for an incompetent litigant; it only allows the court to appoint a guardian ad litem or next friend to make decisions on behalf of the litigant. Here, the court appointed complainant to act as next friend to the plaintiff. 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 judges didn't address the amended complaint.

However, the amended complaint was addressed in the magistrate judge's order directing the clerk of the court to issue summons to the defendants and in the district judge's order granting the defendants' motion for summary judgment. Complainant also alleges that the judges didn't respond to her two requests for an "ex parte" regarding the status of the case, but these requests were granted in an order issued by the magistrate judge. Because these charges lack factual foundation, they must be dismissed. See 28 U.S.C. § 352(b)(1)(B); Misconduct Rule 4(c)(3).

Complainant alleges that the judges didn't give her free access to hearing transcripts despite the plaintiff's in forma pauperis status. But her transcript request was made after the court denied the plaintiff in forma pauperis status for the appeal. 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 also alleges that the judges disregarded evidence, but she doesn't specify what evidence was ignored. Complainant further alleges that she didn't receive certain documents from the court, but she provides no evidence that the judges had any responsibility for sending her the documents. These charges must be dismissed because there isn't sufficient evidence to raise an inference that

misconduct occurred. See 28 U.S.C. § 352(b)(1)(A)(iii); Misconduct Rule 4(c)(3).

Finally, complainant alleges that there was too much delay during the proceedings. Delay is not a proper subject for a misconduct complaint unless the circumstances are unusual, 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.

DISMISSED.