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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. 07-89143

MEMORANDUM AND ORDER

KOZINSKI, Chief Judge:

A complaint of misconduct has been filed against three circuit judges of this circuit. Complainant, a pro se litigant, appealed an order transferring his district court case from one district judge to another district judge. The subject judges dismissed the appeal for lack of jurisdiction because the transfer order was not final or appealable. Complainant filed a motion for reconsideration and a motion for an “open court hearing,” and also submitted several letters to the court of appeals alleging conspiracy, obstruction of justice and federal crimes. The subject judges denied the motion for reconsideration, denied as moot “[a]ll other pending motions” and ordered that no motions for rehearing, or several other types of motions, would be filed or entertained in the closed docket.

Complainant alleges that the order dismissing the appeal was legally flawed and contradicted case law he had cited. Because the charge is directly related to

the merits of the judges' ruling in the underlying case, it must be dismissed. 28 U.S.C. § 352(b)(1)(A)(ii); Rule 4(c)(1) of the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability (Misconduct Rules). 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 judges could not dismiss the appeal without first issuing an order to show cause and/or receiving a motion to dismiss from the defendant. He appears to allege that the judges should have had a hearing or waited until he filed his opening brief. The court may raise the issue of its own jurisdiction sua sponte (without a motion), see Special Investments, Inc. v. Aero Air, Inc., 360 F.3d 989, 992 (9th Cir. 2004), and is not required to hold oral argument or issue an order to show cause before dismissing an appeal for lack of jurisdiction, see Ninth Cir. R. 3-6.

Complainant also alleges that the order denying his motion for reconsideration showed caprice, lack of capacity and deceit on the part of the judges because it denied all pending motions when there were no other pending motions and forbade the filing of a motion for rehearing when there had not been a hearing. Contrary to his assertion, complainant had submitted another motion and

several letters to the court. The mention of a motion for rehearing in the order was as part of a standard list of disallowed motions that are often improperly filed. These charges are 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).

Complainant alleges that the dismissal order was the product of an “insider” hired by a defendant in the case, and that issuing the order a day before his opening brief was due is evidence of “premeditation” or of an ex-parte hearing. However, complainant hasn’t included any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) supporting these allegations. The complaint mentions initials on the bottom line of the order as evidence of misconduct. The initials indicate that, in keeping with normal court practices, a court of appeals staff attorney was assigned to assist in researching issues in the appeal. Because there is insufficient evidence to raise an inference that misconduct occurred, these charges are dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Misconduct Rule 4(c)(3).

DISMISSED.