

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CURTIS A. GIBBS, ) 1:07-cv-01563-SKO-HC  
Petitioner, )  
v. ) ORDER DISREGARDING PETITIONER'S  
J. E. THOMAS, ) PURPORTED WITHDRAWAL OF CONSENT  
Respondent. ) TO MAGISTRATE JUDGE JURISDICTION  
 ) WITHOUT PREJUDICE TO FILING A  
 ) MOTION  
 ) (Doc. 48)  
 )  
 ) ORDER DENYING PETITIONER'S MOTION  
 ) FOR SANCTIONS (Doc. 47)  
 )

Petitioner is a federal prisoner proceeding pro se in a habeas corpus action pursuant to 28 U.S.C. § 2241. Pursuant to 28 U.S.C. § 636(c)(1), the parties have consented to the jurisdiction of the United States Magistrate Judge to conduct all further proceedings in the case, including the entry of final judgment, by manifesting their consent in writings signed by the parties or their representatives and filed by Petitioner on November 7, 2007, and on behalf of Respondent on June 9, 2010. Pending before the Court are Petitioner's purported withdrawal of consent and motion for charges of misconduct.

1       I. Disregard of Petitioner's Purported Withdrawal of  
2       Consent

3       On August 24, 2010, Petitioner filed a document in which he  
4       purported to withdraw his consent to the jurisdiction of the  
5       Magistrate Judge in this action in order to have oversight by the  
6       District Judge and to avoid a risk of delay. (Doc. 48, 1-2.)  
7       Petitioner did not set forth any showing of good cause or  
8       extraordinary circumstances.

9       A habeas corpus proceeding is an original civil proceeding.  
10      Woodford v. Ngo, 548 U.S. 81, 91 (2006). Title 28 U.S.C.  
11      § 636(c) provides for the parties to consent to Magistrate Judge  
12      jurisdiction in civil matters. Section 636(c)(4) provides that  
13      the Court may, for good cause shown on its own motion, or under  
14      extraordinary circumstances shown by a party, vacate a reference  
15      of a civil matter to a Magistrate Judge. Fed. R. Civ. P.  
16      73(b)(3) likewise provides that on its own for good cause, or  
17      when a party shows extraordinary circumstances, a District Judge  
18      may vacate a referral to a Magistrate Judge. Thus, it is  
19      established that once a case is referred to a Magistrate Judge  
20      under § 636(c), the reference can be withdrawn by the Court only  
21      for good cause shown on its own motion, or upon a party's showing  
22      of extraordinary circumstances. Dixon v. Ylst, 990 F.2d 478, 480  
23      (9th Cir. 1993). However, where no motion is made to vacate the  
24      referral of the case due to extraordinary circumstances, and the  
25      Court does not sua sponte find good cause, it is correct for a  
26      Magistrate Judge to continue to proceed in a case. Id.

27      Accordingly, the Court DISREGARDS Petitioner's purported  
28      withdrawal of consent, without prejudice to Petitioner's filing a

1 motion to withdraw consent and vacate the referral of the case to  
2 the Magistrate Judge.

3       II. Motion for Sanctions

4       On August 13, 2010, Petitioner filed a motion entitled as a  
5 motion for charges of misconduct with respect to named attorneys  
6 who represent Respondent or have represented Respondent earlier  
7 in the action. (Doc. 47.) The Court understands this motion to  
8 be a motion for sanctions against the named attorneys.

9 Respondent was sent electronic notification of the filing of the  
10 motion on August 13, 2010. The time for filing opposition to the  
11 motion has passed, and Respondent has not filed opposition or  
12 notice of non-opposition to the motion.

13       The grounds of the motion are criminal delay and neglect of  
14 duty with respect to obtaining the record in this action.

15       A failure to comply with an order of the Court may result in  
16 sanctions, including dismissal, pursuant to the inherent power of  
17 the Court, federal statute, and the Federal Rules of Civil  
18 Procedure. Fed. R. Civ. P. 41(b), 11; Local Rule 110; Chambers v.  
19 NASCO, Inc., 501 U.S. 31, 42-43 (1991). Further, sanctions may  
20 be warranted when there has been conduct that is reckless or in  
21 bad faith. Zambrano v. City of Tustin, 885 F.2d 1473, 1478-80  
22 (9th Cir. 1989); New Alaska Development Corp. v. Guetschow, 869  
23 F.2d 1298, 1306 (9<sup>th</sup> Cir. 1989).

24       Here, the Court has previously considered the conduct of  
25 Respondent in connection with preparation of the record. (Order  
26 granting extension of time filed August 10, 2010 [doc. 43].)  
27 Although there was delay in procuring the record, the Court finds  
28 that no recklessness, bad faith, or other basis for sanctions has

1 been demonstrated. The Court is mindful that record preparation  
2 in this action has required the cooperation of the military  
3 authorities. Further, Respondent has procured the record and has  
4 filed a motion to dismiss.

5 Accordingly, the motion for sanctions is DENIED.  
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7 IT IS SO ORDERED.

8 **Dated: September 15, 2010**

9 **/s/ Sheila K. Oberto**  
10 **UNITED STATES MAGISTRATE JUDGE**

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