

FILED

MAY 11 2016

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 16-90048 and 16-90049

ORDER

THOMAS, Chief Judge:

Complainant alleges that a magistrate judge and a district judge improperly dismissed his underlying civil action, rejected filings, and made other erroneous rulings in the underlying case. These allegations relate directly to the merits of the judges' rulings and must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982); Judicial-Conduct Rule 11(c)(1)(B).

Complainant alleges that the subject judges made rulings in the underlying case without reading his pleadings. However, the orders specifically reference those pleadings and indicate that all were reviewed, and complainant presents no evidence to the contrary. Accordingly, this allegation is conclusively refuted by objective evidence, and is dismissed as unfounded. See 28 U.S.C. §§ 352(b)(1)(A)(iii), 352(b)(1)(B); In re Complaint of Judicial Misconduct, 583 F.3d 598 (9th Cir. Jud. Council 2009); Judicial-Conduct Rule 11(c)(1)(D).

Complainant also alleges that both judges have personal relationships or political affiliations with the defendants in the underlying case, that both judges engaged in ex parte communications, and that the subject magistrate judge suffers from “mental and moral deficiencies.” Complainant offers no objectively verifiable evidence to support these vague and conclusory allegations, which are dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 584 F.3d 1230, 1231 (9th Cir. 2009); Judicial-Conduct Rule 11(c)(1)(D).

To the extent complainant challenges actions by the district court clerk, these allegations are dismissed because this misconduct complaint procedure applies only to federal judges. See In re Complaint of Judicial Misconduct, 632 F.3d 1287, 1288 (9th Cir. Jud. Council 2011); Judicial-Conduct Rule 4.

Complainant’s requests for an advisory opinion or mandamus relief are denied, as such relief is unavailable in these misconduct proceedings. See 28 U.S.C. § 354(a)(2); Judicial–Conduct Rule 11(a).

DISMISSED.