

FILED

MAR 21 2018

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 18-90018 and 18-90019

ORDER

THOMAS, Chief Judge:

Complainant, a pro se litigant, alleges that two magistrate judges made improper procedural and substantive rulings in his underlying civil cases.

Complainant further alleges that the judges acted without complainant's consent to jurisdiction. Although a magistrate judge is restricted from issuing dispositive orders, the docket shows that the magistrate judges made no dispositive rulings in complainant's cases. See 28 U.S.C. § 636(b)(1). To the extent that complainant disagreed with the judges' orders, the charges relate directly to the merits of the judges' rulings and must therefore 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).

Further, complainant alleges that the judges improperly failed to issue orders "under the seal of the court." A judge need not affix the seal of the court to an order, and further, an "allegation that calls into question the correctness of an

official action of a judge . . . is merits related.” See Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice 145 (2006).

Thus, these charges are dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii).

Complainant next alleges that one of the judges had improper ex parte communications with opposing counsel. Complainant presumes this communication occurred because the judge granted a defense motion for an extension of time on the same day that it was filed, which did not allow time for complainant to file an objection. Complainant offers no objectively verifiable proof of an ex parte communication, and this allegation is dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); 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 one of the judges “deleted” complainant’s verified complaint, thereby committing a felony under 18 U.S.C. § 2071. Complainant provides no evidence to support these allegations, which are dismissed as unsupported. See Judicial-Conduct Rule 11(c)(1)(D); see also 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant finally claims that one of the judges has “mental disabilities” but does not further elaborate. A judge’s rulings are not proof of a disability, see In re Complaint of Judicial Misconduct, 583 F.3d 598 (9th Cir. Jud. Council

2009), and complainant provides no other supporting evidence for these charges.

Therefore, the allegations are dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant has now filed three misconduct complaints against three judges, raising allegations that have been dismissed as merits-related and unfounded. Complainant is cautioned that a “complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints.”

Judicial-Conduct Rule 10(a); see also In re Complaint of Judicial Misconduct, 552 F.3d 1146, 1148 (9th Cir. Jud. Council 2009).

DISMISSED.