

FEB 24 2009

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

JUDICIAL COUNCIL
OF THE NINTH CIRCUIT

IN RE COMPLAINT OF
JUDICIAL MISCONDUCT

No. 08-90034

ORDER

KOZINSKI, Chief Judge:

A misconduct complaint has been filed against a magistrate judge. Complainant, a pro se litigant, filed a civil rights action in district court. The matter was referred to the subject judge.

Complainant alleges that the judge improperly lodged rather than filed one of his pleadings. Complainant also alleges that the judge should not have permitted defendants to file an ex parte application for clarification of the pleadings. Complainant further alleges that the judge made improper findings in the Report and Recommendation. All of these charges relate directly to the merits of the judge's rulings and must therefore be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B). A misconduct complaint is not a proper vehicle for challenging the merits of 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 judge was biased against him on account of his

race and pro se status. Complainant also alleges that the judge obstructed justice and intentionally deprived him of his right to oppose defendants' motion for summary judgment. Complainant further alleges that the judge was directed by or engaged in ex parte communications with "unknown agents." But complainant hasn't included any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) to support these allegations. Because there isn't sufficient evidence to raise an inference that misconduct occurred, these charges must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant finally alleges that the judge was condescending toward him in the Report and Recommendation. A review of the Report and Recommendation does not support this allegation. This charge is dismissed as lacking factual foundation. See 28 U.S.C. § 352(b)(1)(B).

DISMISSED.