

MAY 22 2009

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

JUDICIAL COUNCIL
OF THE NINTH CIRCUIT

IN RE COMPLAINT OF
JUDICIAL MISCONDUCT

No. 08-90055

ORDER

KOZINSKI, Chief Judge:

A misconduct complaint has been filed against a district judge. Complainant filed a habeas petition in district court. The subject judge was assigned to the matter.

Complainant alleges that the court routinely made errors in mailing the orders issued in his case. He specifically claims that the court failed to send an order granting an extension of time to the correct address, thereby causing him to miss the deadline to appeal the dismissal of his petition. It appears that the clerk's office sent this order to an outdated address for complainant's attorney, even though the attorney had filed a notice of change of address and had previously alerted the clerk's office that it was mistakenly using his old address. This error by the clerk's office is certainly regrettable, especially as it appears to have been only the latest of several such errors. However, the misconduct complaint procedure applies only to federal judges. See Judicial-Conduct Rule 4; see also In re Complaint Against a Judicial Officer, No. 07-08-90076 (7th Cir. Jud. Council Sept.

2, 2008). Complaints regarding court staff should be made to the appropriate supervisor.

To the extent that complainant alleges that the judge failed to adequately supervise the clerk's office to ensure that orders were correctly mailed, the charge is dismissed because the charged behavior does not constitute "conduct prejudicial to the effective and expeditious administration of the business of the courts." 28 U.S.C. § 351(a); Judicial-Conduct Rule 11(c)(1)(A). Judges ordinarily do not have supervisory responsibility over clerk's office personnel. If a judge becomes aware that clerk's office employees are habitually derelict in their duties, the judge should bring the problem to the attention of the clerk of court. Failure to do so does not, however, amount to misconduct.

DISMISSED.