

JUL 01 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT****IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 08-90151

ORDER**KOZINSKI**, Chief Judge:

A misconduct complaint and two supplements have been filed against a district judge. Complainant, a pro se prisoner, filed two civil actions in district court and the subject judge was assigned to both matters.

Complainant alleges that one of his cases was improperly “reassigned” to the subject judge, but review of the docket shows that complainant’s case was always assigned to the subject judge. In any event, reassignment would not amount to “conduct prejudicial to the effective and expeditious administration of the business of the courts” unless it was done contrary to the court’s normal procedures and for an improper motive. See 28 U.S.C. § 351(a); Judicial-Conduct Rule 11(c)(1)(A). Complainant hasn’t alleged, much less provided proof of, improper procedure or motive.

Complainant also alleges that the judge made a typographical error in the judgment dismissing his second case in order to mislead him into appealing his

first case too early. But complainant hasn't included any objectively verifiable proof (such as names of witnesses, recorded documents or transcripts) showing that the district judge made the error intentionally, and the error was corrected by an amended judgment. Because there is no evidence of misconduct, this charge must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant's allegations against court staff are dismissed because this misconduct complaint procedure applies only to federal judges. See Judicial-Conduct Rule 4.

Complainant's requests for hearings and the appointment of counsel in both his actions are not cognizable under the misconduct complaint procedure and are therefore dismissed. See Judicial-Conduct Rule 3(h).

DISMISSED.