

**FILED**

AUG 19 2008

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

**JUDICIAL COUNCIL  
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF  
JUDICIAL MISCONDUCT**

No. 08-89039

**ORDER**

**KOZINSKI**, Chief Judge:

A complaint of misconduct has been filed against a district judge.

Complainant, a pro se litigant, commenced an action in state court; defendants removed the action to federal court.

Complainant alleges that the judge committed misconduct when he “chose” to remove the action from state court to federal court. But removal is initiated by the defendant in a case, not by the district judge to whom the action is later assigned. See 28 U.S.C. § 1441(a); 28 U.S.C. § 1446(a). Because this charge lacks factual foundation, it must be dismissed. Misconduct Rule 4(c)(3); see 28 U.S.C. § 352(b)(1)(B).

**DISMISSED.**