

MAY 24 2010

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 09-90155, 09-90216,
09-90217 and 09-90218

ORDER

KOZINSKI, Chief Judge:

Complainant has filed two misconduct complaints and two supplements alleging that two district judges and two magistrate judges delayed reassigning his case for two years after another district judge resigned, and that one of the magistrate judges delayed resolving numerous motions filed by complainant during that same period. Complainant had at least four appeals pending in the same matter at that same time, and it was not improper for the judges to wait to address his district court filings until his appeals were resolved. Because delay and failure to rule are not misconduct unless habitual or improperly motivated, In re Complaint of Judicial Misconduct, 567 F.3d 429, 431 (9th Cir. Jud. Council 2009), these charges must be dismissed for failure to allege 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).

Complainant also alleges that the judges failed to notify him when the

district judge assigned to his case resigned. Complainant was notified when his case was reassigned, and none of the judges had a duty to provide any additional notification. These charges are likewise dismissed for failure to allege 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).

Complainant's allegations against the district judge first assigned to his case are dismissed as moot in light of that judge's resignation. In re Charge of Judicial Misconduct, 91 F.3d 90, 91 (9th Cir. Jud. Council 1996).

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

Complainant's request to file his notice of appeal is not cognizable in this proceeding and is also dismissed. Judicial-Conduct Rule 3(h).

DISMISSED.