

DEC 11 2009

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 09-90097 and 09-90098

ORDER

KOZINSKI, Chief Judge:

Complainant, a pro se prisoner, filed a misconduct complaint against a magistrate judge who has since resigned. This complaint is dismissed as moot.

See In re Charge of Judicial Misconduct, 91 F.3d 90, 91 (9th Cir. Jud. Council 1996).

Complainant also alleges that a district judge maliciously fabricated filings related to his habeas petition. Complainant may be confused because it appears that the district judge was assigned to the habeas petition of another prisoner with the same name as complainant, and complainant mistakenly received court documents related to that case due to a clerical error. This clerical error has now been fixed. It is certainly regrettable that court staff mistakenly sent complainant documents related to another prisoner's habeas petition, and I apologize to complainant for the confusion and anxiety this must have caused him. However, the misconduct complaint procedure applies only to federal judges. See Judicial-

Conduct Rule 4; In re Complaint of Judicial Misconduct, 569 F.3d 1093, 1093 (9th Cir. Jud. Council 2009). Complainant's allegations against the district judge must be dismissed because there is no evidence of judicial misconduct. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D); In re Complaint of Judicial Misconduct, 567 F.3d 429, 431 (9th Cir. Jud. Council 2009).

To the extent complainant requests exoneration for his conviction and the appointment of counsel, these requests are not cognizable under the misconduct complaint procedure. See Judicial-Conduct Rule 3(h).

DISMISSED.