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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

GARY W. HAYNIE,  
Plaintiff,  
v.  
RONALD M. WHYTE, U.S. DISTRICT  
JUDGE,  
Defendant.

Case No.: C 10-02621 PVT

**ORDER FOR REASSIGNMENT TO A  
DISTRICT COURT JUDGE; REPORT  
AND RECOMMENDATION TO DENY  
APPLICATION TO PROCEED IN  
FORMA PAUPERIS**

On June 15, 2010, plaintiff Gary W. Haynie applied to proceed *in forma pauperis* in the above-captioned action.<sup>1</sup> Based on the application and the file herein,

IT IS HEREBY ORDERED that this case be reassigned to a District Court Judge<sup>2</sup> with the recommendation that the case be dismissed with leave to amend. A federal court must dismiss an *in forma pauperis* complaint if the complaint is: (1) frivolous; (2) fails to state a claim on which relief may be granted; or seeks (3) monetary relief against a defendant who is immune from such relief.

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<sup>1</sup> The holding of this court is limited to the facts and particular circumstances underlying the present application.

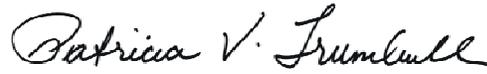
<sup>2</sup> This court is ordering reassignment to a District Court Judge because, absent consent of all parties, a Magistrate Judge does not have authority to dismiss the case.

1 See, 28 U.S.C. § 1915(e)(2); see also *Neitzke v. Williams*, 490 U.S. 319, 324 (1989).

2 Here, plaintiff alleges certain violations of the Judicial Ethics Handbook and the fifth, sixth,  
3 ninth, and fourteenth amendments to the U.S. Constitution. He states that Judge Whyte was biased  
4 in handling his civil case, engaged in improper *ex parte* communications with defendants, and  
5 should be recused from making any further rulings in the underlying case. Plaintiff has failed to  
6 state a claim on which relief may be granted.

7 Before dismissing a complaint, however, a district court must give *pro se* litigants an  
8 opportunity to amend their complaint unless it is absolutely clear that no amendment could cure the  
9 defect. See, *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc). Thus, leave to amend  
10 appears appropriate.

11 Dated: June 23, 2010



12 PATRICIA V. TRUMBULL  
13 United States Magistrate Judge  
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