

APR 29 2009

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 08-89005
ORDER

Before: **THOMPSON, THOMAS, GRABER, MCKEOWN** and
RAWLINSON, Circuit Judges, **A. COLLINS, GONZALEZ,**
LASNIK and **WHALEY**, Chief District Judges, and **HATTER**,
District Judge

Pursuant to Chapter III of the Rules of the Judicial Council Governing
Complaints of Judicial Misconduct or Disability under 28 U.S.C. § 352(c),
complainant has filed a petition for review of the order of the Chief Judge entered
on January 14, 2009, dismissing the complaint against a magistrate judge of this
circuit.

We have carefully reviewed the record and the authorities cited by the Chief
Judge in his order of dismissal. We conclude there is no basis for overturning the
order of dismissal.

With his petition for review, complainant submitted documents that he
acknowledges were not provided with the misconduct complaint. We note that
complainant acknowledges that he also did not present these documents to the
magistrate judge. Rule 6(e) of the Rules of the Judicial Council of the Ninth

Circuit Governing Complaints of Judicial Misconduct or Disability provides:

“[N]ew allegations or evidence not included within the complaint for which review is sought will not be considered by the judicial council.” Even if the Judicial Council could consider this “new evidence,” complainant’s allegation that the magistrate judge improperly denied him the opportunity to discover these or other documents remains related to the merits of a judge’s ruling, which is not a cognizable claim in judicial misconduct proceedings. See 28 U.S.C. § 352(b)(1)(A)(ii).

For the reasons stated by the Chief Judge and based upon the controlling authority cited in support thereof, we affirm.