

AUG 21 2009

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 08-90158

ORDER

SCHROEDER, Circuit Judge¹:

Complainant, a pro se litigant, has filed a misconduct complaint against a circuit judge.

Complainant previously filed a misconduct complaint against a district judge that was dismissed by the subject judge. The current complaint merely repeats certain allegations raised in the prior complaint, and adds allegations of harassment, conspiracy, and slander against the subject judge, due solely to his adverse ruling on the prior misconduct complaint. Complainant does not provide evidence that any misconduct occurred, and the charges must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D). To the extent that complainant alleges that the subject judge improperly dismissed his previous misconduct complaint, this charge is also dismissed. Challenges to the correctness of an order by the chief judge, or a judge acting in that capacity, dismissing a

¹ This complaint was assigned to Circuit Judge Mary M. Schroeder pursuant to 28 U.S.C. § 351(c).

misconduct complaint are properly dismissed as merits-related. See Judicial-Conduct Rule 3(h)(3)(A); Commentary on Judicial-Conduct Rule 3.

Any further complaints that present fundamentally the same allegations may be dismissed summarily as frivolous, and complainant is cautioned that the Judicial Council can restrict and sanction “a complainant who files vexatious, repetitive, harassing, or frivolous complaints, or otherwise abuses the complaint procedure” from filing further complaints. Judicial-Conduct Rule 10(a); see also In re Complaint of Judicial Misconduct, 552 F.3d 1146, 1148 (9th Cir. Jud. Council 2009).

DISMISSED.