

MAY 05 2010

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

JUDICIAL COUNCIL
OF THE NINTH CIRCUIT

IN RE COMPLAINT OF
JUDICIAL MISCONDUCT

No. 09-90095
ORDER

Before: **KOZINSKI**, Chief Judge, **HUG**, **THOMAS**, **MCKEOWN**,
GOULD, and **RAWLINSON**, Circuit Judges, **A. COLLINS**,
GONZALEZ and **HUNT**, Chief District Judges, and **HATTER** and
WHALEY, District Judges

Pursuant to Article V of the Rules for Judicial-Conduct and Judicial-Disability Proceedings under 28 U.S.C. § 352(c), complainant has filed a petition for review of the order of the Chief Judge entered on March 16, 2010, 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.

In the petition for review, for the first time, complainant alleges that the magistrate judge had a conflict of interest because the law firm which formerly employed the magistrate judge defended a suit brought by complainant's former husband about fifteen years ago. The Judicial Council will not consider new

allegations or evidence not included within the misconduct complaint for which review is sought. Even if the Judicial Council could consider this new allegation, complainant provides no evidence that the magistrate judge himself, or even his particular office in a multi-branch law firm, participated in the defense of that case. Nor does she provide any other evidence of a conflict of interest or bias. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D). Complainant also newly raises allegations in the petition for review against opposing counsel that are not cognizable in a misconduct proceeding. See Judicial-Conduct Rule 4.

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