

OCT 09 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALSJUDICIAL COUNCIL
OF THE NINTH CIRCUIT

IN RE COMPLAINT OF JUDICIAL MISCONDUCT

No. 09-90138

ORDER**KOZINSKI**, Chief Judge:

A misconduct complaint has been filed against a circuit judge. Complainant, a member of the public, alleges that the judge committed misconduct before joining the federal bench. Because complainant's allegations concern the judge's actions prior to becoming a federal judge, they are not cognizable under the laws governing judicial misconduct proceedings and must therefore be dismissed. See 28 U.S.C. § 351(a), (d)(1); Judicial-Conduct Rules 4, 11(c)(1)(G); In re Complaint of Judicial Misconduct, 570 F.3d 1144, 1144 (9th Cir. Jud. Council 2009).

Complainant's allegation that the Senate would not have confirmed the judge if it knew of the alleged misconduct must also be dismissed, as confirmation is a political question outside the jurisdiction of the judicial council. See id.

Complainant also alleges that negative press attention attracted by the judge has had "a prejudicial effect on the administration of the business of the courts." Even assuming that is so, press attention is not "conduct" by a judge. This charge

must therefore be dismissed for failure to allege judicial conduct prejudicial to the effective and expeditious administration of the business of the courts. 28 U.S.C. § 351(a); Judicial-Conduct Rules 4, 11(c)(1)(A).

DISMISSED.