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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 08-89011

MEMORANDUM AND ORDER

KOZINSKI, Chief Judge:

A complaint of misconduct has been filed against a district judge of this circuit. Complainant, a litigant, filed an action alleging fraud by state government entities. The subject judge granted the defendants' motions to dismiss her second amended complaint without leave to amend. On appeal, the court of appeals affirmed the dismissal in part and reversed and remanded in part. The United States Supreme Court denied complainant's petition for a writ of certiorari. On remand, the subject judge granted the defendants' motions to dismiss the third amended complaint with prejudice. Complainant's appeal of the most recent dismissal is pending.

Complainant alleges that the judge's orders disregarded the controlling law and rules of evidence. Because the charge is directly related to the merits of the judge's order in the underlying case, it must be dismissed. 28 U.S.C. §

352(b)(1)(A)(ii); Misconduct Rule 4(c)(1) of the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability (Misconduct Rules). A complaint of judicial misconduct is not a proper vehicle for challenging a judge's rulings. See In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

Complainant also alleges that the judge violated the Code of Conduct for United States Judges (Code of Conduct) and the American Bar Association Model Code of Judicial Conduct (ABA Code) by making political contributions with his spouse. The same facts were the subject of an investigation by the former chief judge, and the matter was closed on the basis that corrective action was taken. 28 U.S.C. § 352(b)(2); Misconduct Rule 4(c)(d) (“[t]he complaint proceeding may be concluded if the chief judge determines that appropriate action has been taken to remedy the problem raised by the complaint, [or] that the claimed conduct is an isolated mistake unlikely to be repeated”). Both codes state that a judge should not make contributions to a political organization or candidate, but do not prohibit a judge's spouse from making political contributions or being politically active. Code of Conduct Canon 7(A)(3); ABA Code Rule 4.1. As part of the corrective action, the judge explained that the contributions were made by the judge's spouse using checks from a joint checking account. The judge explained that he sought

advice regarding the Code of Conduct and was advised that in the future, his spouse should make such contributions using a separate checking account or a cashier's check. Complainant has presented no evidence that the subject judge has failed to comply with this procedure. Because the judge's conduct was subject to an earlier corrective act, and complainant has presented no evidence of subsequent misconduct, the complaint is dismissed as to this ground.

Complainant also alleges that the political contributions indicate an improper bias or motive that influenced the judge's decisions in the underlying case. But complainant hasn't included any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) that supports these allegations. Accordingly, the charge is dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Misconduct Rule 4(c)(3).

DISMISSED.