

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. 08-89021  
**ORDER**

Before: **THOMPSON, THOMAS, GRABER, MCKEOWN** and  
**RAWLINSON**, Circuit Judges, **A. COLLINS, 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 December 8, 2008, dismissing the complaint against a district judge of this  
circuit.

We have carefully reviewed the record and the authorities cited by the Chief  
Judge in his order of dismissal. In his petition for review, complainant contends,  
for the first time, that his two former attorneys could corroborate one of his  
allegations. Although these persons were listed as former counsel in a habeas

\*Hon. Irma E. Gonzalez did not participate in the consideration of this matter.

petition attached as an exhibit to the underlying complaint, complainant never proffered these names as witnesses to support his allegation. Rule 6(e) of the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability provides: “New allegations or evidence not included within the complaint for which review is sought will not be considered by the judicial council.” Thus, the Judicial Council has not considered the new evidence set forth in the petition for review.

We conclude there is no basis for overturning the order of dismissal. For the reasons stated by the Chief Judge and based upon the controlling authority cited in support thereof, we affirm.