

**JUDICIAL COUNCIL OF THE  
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL  
MISCONDUCT

Nos. 10-09-90029 through 10-09-90037

Before **HARTZ**, Circuit Judge.

**ORDER**

Complainant has filed a complaint of judicial misconduct against five circuit judges and four district judges in this circuit. My consideration of this complaint is governed by 1) the misconduct rules issued by the Judicial Conference of the United States, entitled *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (the “Misconduct Rules”); 2) the federal statute dealing with judicial misconduct, 28 U.S.C. § 351 *et seq.*; and 3) the “Breyer Report,” a study by the Judicial Conduct and Disability Act Study Committee, headed by Supreme Court Justice Stephen Breyer, entitled *Implementation of the Judicial Conduct and Disability Act of 1980*. The Breyer Report may be found at: <http://www.supremecourtus.gov/publicinfo/breyercommitteereport.pdf>. To the extent that any relevant prior decisions of the full Judicial Council of this circuit consistent with those authorities exist, they may also govern my consideration of this complaint.

This matter has been submitted to me for determination under Misconduct Rule 25(f). Complainant has received or has access to a copy of the Misconduct

Rules. In accord with those rules, the names of the complainant and subject judges shall not be disclosed in this order. *See* Misconduct Rule 11(g)(2).

Complainant contends that dismissal of previously filed misconduct complaints constituted misconduct, and that the Judicial Council's failure to appoint Special Committees in those matters was also misconduct. These claims are not cognizable in this forum because they are "directly related to the merits of a decision or procedural ruling." Misconduct Rule 11(c)(1)(B). *See* Commentary to Misconduct Rule 3 ("The phrase 'decision or procedural ruling' is not limited to rulings issued in deciding Article III cases or controversies. Thus, a complaint challenging the correctness of a chief judge's determination to dismiss a prior misconduct complaint [is] properly dismissed as merits-related . . ."). This same reasoning applies to any decision of the Judicial Council upon complainant's petitions for review.

Accordingly, this complaint is dismissed on the basis of Misconduct Rule 11(c). The Circuit Executive is directed to transmit this order to complainant and copies to the respondent judges and the Judicial Conference Committee on Judicial Conduct and Disability. *See* Misconduct Rule 11(g)(2). To seek review of this order, complainant must file a petition for review by the Judicial Council. The requirements for filing a petition for review are set out in Misconduct Rule 18(b). The petition must be filed with the Office of the Circuit Executive within 35 days of the date of the letter transmitting this order. *Id.*

So ordered this 10th day of September, 2009.

/s/ Harris L Hartz

Honorable Harris L Hartz  
Circuit Judge