

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL
MISCONDUCT

No. 10-09-90077

Before **TACHA**, Circuit Judge

ORDER

Complainant has filed a complaint of judicial misconduct against a circuit judge 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.

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 judge shall

not be disclosed in this order. *See* Misconduct Rule 11(g)(2). I am determining this complaint pursuant to Misconduct Rules 25(f).

Complainant has filed this complaint against a single circuit judge, but the complaint takes issue with an administrative determination by the court of appeals to remove complainant from the court's appellate CJA Panel. The subject judge notified complainant of the court's decision. This claim is not cognizable as misconduct because it is "directly related to the merits of a decision or procedural ruling." Misconduct Rule 11(c)(1)(B). The phrase "decision or procedural ruling" includes administrative decisions by judges, and is not limited to decisions or determinations in Article III cases. *See* Commentary to Misconduct Rule 3.

Pursuant to Misconduct Rule 11(a), I am required to review the complaint for any evidence of misconduct or disability, even though no claim of either is articulated in the complaint. I have done so and conclude that there are no allegations which constitute either misconduct or disability on the part of the subject judge. Accordingly, this complaint is dismissed pursuant to Misconduct Rule 11(c).

The Circuit Executive is directed to transmit this order to complainant and copies to the respondent judge 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 17th day of February, 2010.

/s/ Deanell Reece Tacha

Honorable Deanell Reece Tacha
Circuit Judge