

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL
MISCONDUCT

Nos. 10-09-90006 & 10-09-90007

Before **TACHA**, Circuit Judge.

ORDER OF DISMISSAL

Complainant has filed a complaint of judicial misconduct against two circuit 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.supremecourt.us.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 judges shall not be disclosed in this order. *See* Misconduct Rule 11(g)(2).

Complainant takes issue with a ruling on a past misconduct claim. That matter is no longer subject to review, in accord with Misconduct Rule 19(e) and Commentary to Misconduct Rule 3, which acknowledges that misconduct decisions are merits-related decisions. Claims that are “directly related to the merits of a decision or procedural ruling” are not cognizable as misconduct. *See also* Misconduct Rule 11(c)(1)(B). As explained in the Breyer Report, this exclusion of matters related to the merits of underlying cases protects the independence of the judges deciding those cases. *See* Breyer Report, App. E., ¶ 2.

Otherwise, the complaint asserts no allegations of misconduct against the subject judges. Instead, complainant makes general claims against the district court and court of appeals in connection with the handling of an underlying habeas case - claims of conspiracy, racial discrimination, and fraud. These same claims were included in past misconduct complaints filed by complainant against other judges - complaints that were considered and dismissed. In the order dismissing complainant’s most recent misconduct complaint, complainant was warned against the continued filing of these same claims. This is complainant’s fourth misconduct complaint making substantially similar allegations.

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 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.*

Further, complainant is directed to show cause why complainant's right to file future misconduct complaints should not be limited so as to preclude the repetitive presentation of claims that have been previously examined and dismissed. Response to this show cause order should be filed with the Office of the Circuit Executive within 35 days of the date of the letter transmitting this order, and may be combined with a petition for review.

So ordered this 23rd day of February, 2009.

/s/ Deanell Reece Tacha

Honorable Deanell Reece Tacha
Circuit Judge