

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL
MISCONDUCT

Nos. 10-09-90008 & 10-09-90009

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.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 judges shall not be disclosed in this order. *See* Misconduct Rule 11(g)(2).

Complainant first takes issue with rulings in a previous misconduct claim. As claimant has been informed before, the prior misconduct complaints are no longer subject 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.

Complainant also challenges a decision denying complainant a certificate of appealability in connection with the dismissal of a recent appeal filed by complainant. For the same reason, this claim is not cognizable here. *See* Misconduct Rule 3(h)(3(A) (misconduct does not include allegations related to the merits of a decision or procedural ruling).

Complainant filed supplemental materials seeking “a writ of decree upon right.” These materials include unspecified claims of conspiracy by one of the subject judges. While claims of conspiracy can state a valid claim for misconduct even when the alleged conspiracy relates to a judge’s ruling, *see* Commentary to Misconduct Rule 3, this conspiracy claim fails because it is completely unsupported. The Misconduct Rules require complainants to support their

allegations with “sufficient evidence to raise an inference that misconduct has occurred.” *See* Misconduct Rule 11(c)(1)(D).

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 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 23rd day of February, 2009.

/s/ Deanell Reece Tacha

Honorable Deanell Reece Tacha
Circuit Judge