

DEC 16 2011

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS**JUDICIAL COUNCIL  
OF THE NINTH CIRCUIT****IN RE COMPLAINT OF  
JUDICIAL MISCONDUCT**Nos. 11-90114, 11-90115,  
11-90116, 11-90117, 11-90118,  
11-90119, 11-90120, 11-90121,  
11-90122 and 11-90123**ORDER****SCHROEDER**, Circuit Judge<sup>1</sup>:

A pro se litigant alleges that five circuit judges and five district judges improperly affirmed the Chief Judge's order that dismissed complainant's four previous judicial misconduct complaints. Complainant believes that two of the judges should have been disqualified from considering his petition for review because he had filed additional misconduct complaints naming them, and he submits that they should have recused themselves while those complaints were pending. First, neither judge was a "subject judge" in the complaints related to the petition for review. See Judicial-Conduct Rule 25(b). Second, allegations that a judge erred in failing to recuse are generally merits-related, and may constitute misconduct only if the judge "deliberately failed to [recuse] for illicit purposes," which was not shown here. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct

---

<sup>1</sup> This complaint was assigned to Circuit Judge Mary M. Schroeder pursuant to 28 U.S.C. § 351(c).

Rule 11(c)(1)(B); Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice 146 (2006), available at <http://supremecourt.gov/publicinfo/breyercommitteereport.pdf>. As a result, these allegations, and the related charges that all of the judges “conspired in the conflict of interest” by allowing the two other judges to participate, are dismissed.

Complainant further alleges that by affirming the Chief Judge’s order, all of the judges admitted “complicity in the crimes summarized” in his previous misconduct complaints. These charges are dismissed because challenges to the correctness of an order dismissing a misconduct complaint are properly dismissed as merits-related. See Judicial-Conduct Rule 3(h)(3)(A); Commentary on Judicial-Conduct Rule 3.

Complainant also alleges that court committed fraud because a docketing clerk rejected the petition for review he filed in the previous matters as untimely. This allegation is dismissed because the misconduct complaint procedure applies only to federal judges, not to court staff. See Judicial-Conduct Rule 4. Further, the Judicial Council ultimately considered that petition, explaining that “[C]omplainant’s petition for review was originally rejected because it was delivered to the circuit clerk after the time period prescribed in Judicial-Conduct Rule 18(b), but complainant subsequently provided a United States Postal Service

tracking form showing that his mailing should have been timely received.” See In re Complaint of Judicial Misconduct, Nos. 09-90085+ (9th Cir. Jud. Council 2011).

**DISMISSED.**