

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL
MISCONDUCT

Nos. 10-08-90094 & 10-08-90095

Before **HENRY**, Chief Judge.

ORDER OF DISMISSAL

Complainant has filed a complaint of judicial misconduct against a district judge and a magistrate 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).

The complaint sets out conclusory claims of favoritism, bribery, and *ex parte* communication. Complainant contends that the judges are motivated to give special treatment to named defendants in complainant's underlying cases because of the judges' association with the state's governor. Complainant also asserts, without support, that one of the judges is ethnically biased. Complainant argues that the judge has failed to issue service of process in the underlying lawsuits, causing prejudice to complainant, and contends that prisoner litigation screening pursuant to 28 U.S.C. §1915A constitutes misconduct.

These claims are not cognizable as misconduct. The latter claims about service of process and prisoner litigation screening are "directly related to the merits of a decision or procedural ruling." Misconduct Rule 3(h)(3)(A). As such, and to the extent that complainant challenges those rulings, these claims must be dismissed. 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.

The majority of the claims are unsupported allegations of favoritism by the judges towards the defendants in complainant's underlying cases. There is

mention of an unspecified bribe and unidentified “other personal favors,” conclusory claims of *ex parte* communications between the subject judges, named defendants in the underlying lawsuits, and “various pro prosecutorial entities and factions.” These claims fail because they are 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). Without any factual support, these claims must be dismissed. *Id.*

Finally, complainant alleges that one of the defendants in the underlying cases brought pressure to bear on another attorney not to accept complainant’s case. This claim does not implicate the subject judges and therefore is not a cognizable misconduct claim. *See* Misconduct Rule 4.

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 subject 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 11th day of November, 2008.

/s/ Robert H. Henry

Honorable Robert H. Henry
Chief Circuit Judge