

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL
MISCONDUCT

No. 2008-10-372-15

Before **HENRY**, Chief Judge.

ORDER OF DISMISSAL

Complainant has filed a complaint of judicial misconduct against a district 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*; 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).

Complainant contends that the subject judge wants to deny complainant access to courts; is part of a conspiracy with an Assistant U.S. Attorney and other, unnamed, judges; has participated in fraud and deception; is biased against complainant and other pro se litigants; and is either senile or incompetent. While these claims may be cognizable under the misconduct statute, *see* commentary to Misconduct Rule 3(h)(3)(A), such claims must be supported by “sufficient evidence to raise an inference that misconduct has occurred,” *see* Misconduct Rule 11(c)(1)(D). The sole support complainant has submitted for these claims is the judge’s rulings in complainant’s underlying cases. Complainant discusses these rulings at some length, asserting that they violate the applicable law and complainant’s constitutional rights. Claims based on a judge’s rulings are not cognizable here. *See* Misconduct Rule 11(c)(1)(B). That is because claims that are “directly related to the merits of a decision or procedural ruling” do not constitute misconduct. Misconduct Rule 3(h)(3)(A). The policy behind this rule is that “the complaint procedure cannot be a means for collateral attack on the substance of a judge’s rulings.” Breyer Report, App. E., ¶ 2. As explained in the commentary to Misconduct Rule 3, “[t]his exclusion preserves the independence of judges in the exercise of judicial power.”

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 3rd day of June, 2008.

/s/ Robert H. Henry

Honorable Robert H. Henry
Chief Circuit Judge