

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL
MISCONDUCT

No. 2008-10-372-17

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, based on “information and belief” and a “newspaper article,” accuses the subject judge of suffering from alcoholism and being racially biased. Complainant also alleges that the judge is in a conspiracy with the state Attorney General to deprive complainant of all rights, and to cover up a state government “sponsored slow-killing” of complainant in prison. Claims of bias, conspiracy, and disability on the part of a judge are cognizable misconduct claims, *see* Misconduct Rules 3(h)(3)(A), 3(e) and related commentary. Nonetheless, complainants must provide support for their claims. Claims that lack “sufficient evidence to raise in inference that misconduct has occurred or that a disability exists,” must be dismissed. Misconduct Rule 11(c)(1)(D). Because complainant has provided no factual allegations in support of the allegations set out in the complaint, this complaint must be dismissed pursuant to Misconduct Rule 11(c).

Complainant also requests that this complaint be transferred to another circuit, based on complainant’s “belief” that the judges of the Tenth Circuit are biased against complainant based on race and mental handicap. As with the claims set out in the complaint, this claim of bias is unsupported and speculative. No transfer will be requested. *See* Misconduct Rule 26.

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