

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL
MISCONDUCT

No. 2008-10-372-25

Before **TACHA**, Circuit Judge.

ORDER OF DISMISSAL

Complainant has filed a complaint of judicial misconduct against a circuit 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). This complaint was assigned to me pursuant to Misconduct Rule 25(f).

Complainant contends that the subject judge was improperly influenced in ruling on matters in complainant's underlying case and that the judge has committed misconduct by giving "special treatment for friends and relatives."

Complainant points to the judge's relations, prior employment, prior professional associations and education, and speculates that these associations influenced the judge to rule without consideration of the applicable law or due process.

To the extent that these claims challenge the judge's rulings, they are not cognizable as misconduct because they are "directly related to the merits of a decision or procedural ruling," *see* 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." These claims must be dismissed. Misconduct Rule 11(c)(1)(B).

Claims of bias or improper motive are cognizable misconduct claims, even though the claims are related to a judge's rulings, *see* Misconduct Rules 3(h)(3)(A), 3(e) and related commentary. Nonetheless, complainants must provide support for their claims. Complainant has set out no factual allegations in support of the claims of improper motive, influence and "special treatment for

friends and relatives” set out in the complaint other than complainant’s own speculation based on the judge’s rulings. Those rulings cannot, by themselves, provide grounds for these claims. Claims that lack “sufficient evidence to raise in inference that misconduct has occurred” must be dismissed. 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 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 19th day of May, 2008.

/s/ Deanell Reece Tacha

Honorable Deanell Reece Tacha
Circuit Judge