

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL
MISCONDUCT

No. 2008-10-372-26

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 takes issue with rulings by the subject judge in an underlying case. Complainant contends that the judge is biased and prejudiced against complainant, and incapable of rendering an impartial decision. Complainant alleges that the judge is either mentally or physically disabled and cannot properly administer the business of the courts, and complains that the judge's rulings were untimely. Complainant speculates that the judge must have had a financial interest in the outcome of the underlying case, or is related to one of the defendants.

To the extent that these claims involve or are based solely on the judge's rulings, they are not cognizable as misconduct. *See* Misconduct Rule 3(h)(3)(A). that are "directly related to the merits of a decision or procedural ruling" must be dismissed. Misconduct Rule 11(c)(1)(B). 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."

Claims of bias, improper motive such as financial interest or personal connection to parties, 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. Complainant's sole support for these claims is the judge's rulings, which, as

noted above, do not provide evidentiary support for complainant's assertions and speculations. Claims that lack "sufficient evidence to raise an inference that misconduct has occurred or that a disability exists," must be dismissed.

Misconduct Rule 11(c)(1)(D).

The complaint about the judge's alleged delay in a single ruling is also not cognizable as misconduct. *See* Misconduct Rule 3(h)(3)(B) and accompanying commentary.

Accordingly, this complaint is dismissed. 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