

**JUDICIAL COUNCIL OF THE  
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL  
MISCONDUCT

Nos. 10-08-90027 & 10-08-90039

Before **HENRY**, Chief Judge.

**ORDER OF DISMISSAL**

Complainant has filed two complaints of judicial misconduct; one against a district judge in this circuit, the other against a circuit judge. These two complaints have been consolidated for determination. My consideration of these complaints 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.supremecourt.us.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 the rulings of both subject judges. The rulings were dismissals of an underlying case and related appeal, both brought by complainant. Complainant contends that these rulings are contrary to both law and fact, and are a violation of complainant's constitutional rights. These claims are not cognizable as misconduct because they are "directly related to the merits of a decision or procedural ruling." 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. In other words, these misconduct procedures are not a means for reviewing the merits of a judge's rulings.

Complainant also asserts that the judges' rulings are the result of bad motives, including racial bias, conspiracy, corruption, and malice. Such claims can constitute misconduct, *see* Misconduct Rule 3(h)(3)(A). However, complainant offers no proof of these alleged motives other than the content of the judges' rulings. As set out in the Misconduct Rules, complainants must support their allegations with "sufficient evidence to raise an inference that misconduct has occurred." The judges' rulings do not support such an inference here.

Accordingly, these complaints are dismissed pursuant to Misconduct Rule 11(c). The Circuit Executive is directed to transmit this order to complainant and copies to the respondent 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 24th day of June, 2008.

/s/ Robert H. Henry

Honorable Robert H. Henry  
Chief Circuit Judge