

**JUDICIAL COUNCIL OF THE  
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL  
MISCONDUCT

No. 10-08-90028

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 has engaged in unethical conduct and has conspired with an Assistant U.S. Attorney to indict and convict complainant. The only support provided for these claims is complainant's assertion that the laws on which the indictment was based were never properly enacted into law and are therefore void. The bulk of the complaint contains complainant's argument in support of this legal premise.

While claims of conspiracy can state a valid claim for misconduct even when the alleged conspiracy relates to a judge's ruling, *see* Commentary to Misconduct Rule 3, this conspiracy claim fails because it is completely unsupported. The Misconduct Rules require complainants to support their allegations with "sufficient evidence to raise an inference that misconduct has occurred." *See* Misconduct Rule 11(c)(1)(D). Nothing in this complaint supports a reasonable inference that the subject judge conspired with the unnamed Assistant U.S. Attorney.

The claims that are based on complainant's contention that certain laws are void must also be dismissed. 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); *see also* Commentary to Misconduct Rule 3 ("Any allegation that calls into question the correctness of an official action of a judge - without more - is merits-related."). As explained in the Breyer Report, this exclusion of matters related to the merits of underlying cases protects the

independence of the judges deciding those cases. *See* Breyer Report, App. E., ¶ 2. 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 24th day of June, 2008.

/s/ Robert H. Henry

Honorable Robert H. Henry  
Chief Circuit Judge