

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL
MISCONDUCT

No. 10-08-90048

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, contending that they, together with the judge's age, demonstrate senility. Complainant also characterizes the rulings as based on racial bias, unfair, and legally incorrect. Complainant alleges that the judge is "most likely gay." While claims of bad motive may be cognizable under the misconduct statute, *see* commentary to Misconduct Rule 3(h)(3)(A), such claims must be supported by "sufficient evidence to raise an inference that misconduct has occurred," *see* Misconduct Rule 11(c)(1)(D). The sole support complainant has submitted for these claims is the judge's rulings in complainant's underlying cases. Claims based on a judge's rulings are not cognizable here. *See* Misconduct Rule 11(c)(1)(B). That is because claims that are "directly related to the merits of a decision or procedural ruling" do not constitute misconduct. Misconduct Rule 3(h)(3)(A).

Our files indicate that this is complainant's second misconduct complaint this year against the same judge. The earlier complaint raised many of the same unsupported and incognizable claims posited here. Complainant should be aware of Misconduct Rule 10(a), which sets out procedures and standards for the imposition of limitations on complainants who file repetitive, harassing, or frivolous complaints. Complainant contends that the earlier misconduct complaint was misconstrued and improperly dismissed without investigation, despite its validity. The rule precluding claims directly related to the merits of a decision by a judge, *see* Misconduct Rule 11(c)(1)(B) include claims relating to

rulings on misconduct complaints. *See Commentary* to Misconduct Rule 3(h)(3)(A). This claim is not cognizable as misconduct.

In light of the above analysis, 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 18th day of August, 2008.

/s/ Robert H. Henry

Honorable Robert H. Henry
Chief Circuit Judge