

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL
MISCONDUCT

Nos. 10-08-90049 through
10-08-90071

Before **HENRY**, Chief Judge.

**ORDER OF DISMISSAL
and TO SHOW CAUSE**

Complainant has filed a complaint of judicial misconduct against 14 circuit judges and 9 district judges 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.

I am authorized to consider this complaint, despite being named as a subject of the complaint, by virtue of a determination by the Tenth Circuit

Judicial Council that such consideration is in the interests of sound judicial administration under the circumstances presented here. *See* Misconduct Rule 25(f). 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 judges shall not be disclosed in this order. *See* Misconduct Rule 11(g)(2).

Complainant brings this complaint against all of the appellate judges in the Tenth Circuit because the court denied complainant's motion for rehearing en banc following the district court's denials of complainant's efforts to overturn an underlying criminal conviction. Complainant also brings this complaint against judges of the district court who heard or considered complainant's various and continued efforts to challenge that conviction.

Complainant takes issue with rulings by all of the named judges, and lists witnesses who allegedly would testify to wrongdoings during the underlying criminal trial. To the extent that complainant challenges and seeks relief from underlying rulings, 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). 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.

Complainant also contends that the named judges are in a conspiracy to deny complainant's freedom and to keep complainant incarcerated, both because

of complainant's race and to cover up judicial wrongdoing. While allegations of conspiracy and bias can state valid claims of misconduct, *see* Commentary to Misconduct Rule 3, these claims fail because they are 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). Complainant's listing of witnesses who allegedly would testify to the presence of a conspiracy does not, without sufficient factual allegations supporting a reasonable inference that a conspiracy exists, compel me to inquire further into these matters.

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 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.*

This is complainant's third judicial misconduct complaint. Although each complaint has named different judges in an effort to turn complainant's merits-related claims into ones for judicial misconduct, the same claims challenging complainant's conviction underlie each complaint. In my order dismissing

complainant's second misconduct complaint, I warned complainant against filing further duplicative misconduct complaints. This latest complaint is clearly duplicative of prior complaints, and is also an unprevailing attempt to disqualify all active circuit judges from reviewing the complaint.

I conclude that complainant's filings are an abuse of the complaint procedure. Pursuant to Misconduct Rule 10(a), complainant is hereby directed to show cause why the right to file further complaints should not be limited. I propose that, after consideration of complainant's response to this order, the Judicial Council restrict complainant from filing any further judicial misconduct complaints which challenge, directly or indirectly, complainant's underlying conviction and the merits of any subsequent court proceedings during which complainant challenged that conviction. Complainant's response to this show cause order should be sent to the Office of the Circuit Executive within 20 days of the date of this order.

So ordered this 18th day of August, 2008.

/s/ Robert H. Henry

Honorable Robert H. Henry
Chief Circuit Judge