

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL
MISCONDUCT

Nos. 10-08-90080 through
10-08-90083

Before **HENRY**, Chief Judge.

ORDER OF DISMISSAL

Complainant has filed a complaint of judicial misconduct against three circuit judges and 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 sets out claims against the district judge who presided over complainant's underlying criminal case as well as the members of the appellate panel that handled the resulting appeal. In the majority of the claims set out, complainant takes issue with the judges' rulings, arguing that the rulings on jurisdiction and waiver are legally wrong and amount to criminal conduct. 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 alleges that the district judge conspired with an AUSA to have the case assigned to this particular judge's chambers and to indict complainant. Complainant further alleges another conspiracy with complainant's court-appointed counsel to convict complainant. 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, these conspiracy 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). No such evidence is offered in the complaint.

Finally, although the complaint summarizes the issues presented as including claims that the judges “failed to provide reasons where required;” engaged in “improper reliance on ex-parte contact;” and abused their authority, no allegations in support of these claims were set out in the complaint. These conclusory statements do not satisfy the above-quoted misconduct rules’ requirement that claims be supported.

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.*

So ordered this 20th day of October, 2008.

/s/ Robert H. Henry

Honorable Robert H. Henry
Chief Circuit Judge