

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL
MISCONDUCT

Nos. 10-08-90101 through
10-08-90103

Before **HENRY**, Chief Judge.

ORDER OF DISMISSAL

Complainant has filed a complaint of judicial misconduct against three 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* (the “Misconduct Rules”); 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 judges shall not be disclosed in this order. *See* Misconduct Rule 11(g)(2).

Although the statement accompanying the complaint is quite difficult to understand, I can glean these claims from it: 1) complainant takes issue with rulings by one of the subject judges, apparently dismissing an underlying case; 2) complainant alleges that complainant's state court prosecution was directed by the federal government; and 3) complainant contends that the judges are in a conspiracy to cover up tampering activities with regard to state and federal grand juries and specifically those juries that returned indictments against complainant. Two of the three subject judges are not named in complainant's statement.

To the extent that complainant challenges rulings by the subject judges, 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 notes that the existence of an appellate remedy does not preclude otherwise valid misconduct claims, *see* Commentary to Misconduct Rule 3. Regardless, however, complainant cannot challenge the merits of a judge's ruling through these procedures.

While claims of conspiracy can state a valid claim for misconduct even when the alleged conspiracy relates to a judge's ruling, *see id.*, complainant's 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). Complainant's claim that the federal government directed the prosecution of the underlying criminal case both fails to implicate any of the subject judges and lacks evidentiary support.

Because complainant's claims either lack support or are not cognizable as misconduct, I also deny complainant's request to transfer this complaint pursuant to Misconduct Rule 26.

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.*

These claims are duplicative of a misconduct complaint that complainant filed in 2003, and of multiple attempts by complainant to file further misconduct

complaints after that date. I conclude that complainant's continued attempts to file claims on these same issues since 2003 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 raise these same issues, namely the alleged tampering with the composition of federal and state grand juries in connection with complainant's underlying conviction and related alleged conspiracy on the part of federal judges and others. 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 11th day of December, 2008.

/s/ Robert H. Henry

Honorable Robert H. Henry
Chief Circuit Judge