

**JUDICIAL COUNCIL OF THE  
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL  
MISCONDUCT

Nos. 10-09-90015 & 10-09-90016

Before **HENRY**, Chief Judge.

**ORDER OF DISMISSAL**

Complainant has filed a complaint of judicial misconduct against two 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).

Complainant contends that one of the subject judges is severely impaired and that the other judge is covering up this impairment by ruling against complainant in underlying cases. Complainant characterizes these rulings as discriminatory and hostile, but provides no examples or basis which would support that description. Complainant further contends that the judges are conspiring among themselves and with other named judges and parties to hinder the progress of complainant's cases, resulting in intentional delay. Finally, complainant contends that I should disqualify myself from consideration of this complaint in light of a previous misconduct complaint filed against me by complainant.

To the extent that complainant takes issue with the judges' 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.

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). Complainant’s claims of intentional delay and improper discriminatory motive likewise fail because of the lack of factual allegations which would reasonably give rise to an inference of judicial misconduct.

Further, I decline to disqualify myself in this matter. Complainant’s previous misconduct complaint against me challenged my rulings in prior misconduct matters against one of these same subject judges, and was dismissed pursuant to Misconduct 11(c)(1)(D). Commentary to the Misconduct Rules is clear that the Rules’ prohibition against claims related to the merits of underlying cases includes claims related to rulings in misconduct complaints. *See* Commentary to Misconduct Rule 3. Complainant cannot manufacture a reason for disqualification by filing a misconduct complaint based on prior misconduct rulings.

Finally, our files indicate that this is complainant’s fourth misconduct complaint, and the third one against one of the subject judges. Complainant’s prior misconduct complaints made similar allegations of disability against that subject judge, and also alleged unsupported claims of conspiracy in connection with underlying cases. 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.

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 6th day of April, 2009.

/s/ Robert H. Henry

Honorable Robert H. Henry  
Chief Circuit Judge