

**JUDICIAL COUNCIL OF THE  
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL  
MISCONDUCT

No. 10-09-90046

Before **HENRY**, Chief Judge.

**ORDER**

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* (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 judge shall not be disclosed in this order. *See* Misconduct Rule 11(g)(2).

Complainant contends that the subject judge has committed misconduct by delaying initial rulings in an underlying civil rights case. Delay is generally not misconduct, except in those cases involving “improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” Misconduct Rule 3(h)(3)(B). Here, complainant neither alleges improper motive nor sets out allegations from which such motive could be inferred. Complainant does not mention delay in other cases. In light of the definition of misconduct set out in the Misconduct Rules, I conclude that the alleged delay, even if true, is not prejudicial to the effective and expeditious administration of the business of the courts. *See* Misconduct Rule 11(c)(1)(A).

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 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 14th day of August, 2009.

/s/ Robert H. Henry

Honorable Robert H. Henry  
Chief Circuit Judge