

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL
MISCONDUCT

No. 10-09-90047

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 takes issue with the subject judge's rulings in an underlying case, alleging that they are contrary to law and that they are an obstruction of justice, "acts of bad faith under fraudulent pretenses," and conspiracy. Complainant contends that the judge and the state are interfering with complainant's constitutional rights.

To the extent that complainant challenges the rulings of the subject judge, including the legal bases for those 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's claims of interference, obstruction of justice, fraud, and conspiracy also fail. Allegations of conspiracy and ill motive can sometimes state valid claims of misconduct, even when the alleged conspiracy relates to a judge's ruling, *see* Commentary to Misconduct Rule 3. However, 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). The complaint contains no support for these claims. Complainant attaches an affidavit, but it does not implicate the subject judge or provide a basis for an

inference of misconduct. Complainant should note that these procedures apply only to federal judges. Misconduct Rule 4.

Accordingly, the 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