

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL
MISCONDUCT

No. 10-09-90049

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 has set out two claims. First, complainant contends that a filing fee sent to the court in connection with an underlying case assigned to the subject judge was not properly attributed to that case. Complainant characterizes this as a claim for wrongful seizure and fraud. Regardless, however, this claim is not against the subject judge. None of complainant's allegations on this point are against the judge, and the judge's conduct is not implicated by the alleged facts. The misconduct procedures apply only to federal judges, and not to court staff. Misconduct Rule 4. Further, it appears from my review of the docket sheet in the underlying case that the filing fee was properly attributed to that case in February of 2009, shortly after complainant first brought the problem to the court's attention.

Complainant's second claim is that the judge has not ruled on initial motions in the underlying case, including a motion for service. Complainant contends that this five-month delay amounts to interference with the administration of justice and results in a denial of access to the courts. The Misconduct Rules indicate that delay in ruling is not generally misconduct, unless a complainant can demonstrate either that improper motive has resulted in the delay as to a particular decision, or that the judge has engaged in habitual delay in a significant number of unrelated cases. *See* Misconduct Rule 3(h)(3)(B). Complainant has not argued or established either of these exceptions. Therefore,

the delay, even if true, does not constitute misconduct. 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