

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL
MISCONDUCT

No. 10-09-90051

Before **HENRY**, Chief Judge.

ORDER

Complainant has filed a complaint of judicial misconduct against a magistrate 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 demonstrated bias against complainant in the handling of an underlying case. Complainant contends that this bias arises from complainant's race and status as a pro se prisoner. However, with one exception discussed below, the only support complainant offers for this claim is the judge's rulings, legal theories, and recommendations. As such, the claim is not cognizable as misconduct because it is "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 argues that the judge's rulings are so contrary to established statutes, case law, and court rules, "as to display a clear inability to render fair judgment." I decline this invitation to review the merits of complainant's case.

Complainant contends that the bias is also shown by a defamatory statement made by the judge in a recommendation to the district court. The judge's recommendation, however, indicates that the statement in question found adequate support in the record, and therefore does not support complainant's allegation that the comment is evidence of bias.

Finally, complainant implies that the judge has conspired with defendants in the underlying case to rule against complainant. Allegations 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; however, 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).

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 October, 2009.

/s/ Robert H. Henry

Honorable Robert H. Henry
Chief Circuit Judge