

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL
MISCONDUCT

No. 10-09-90060

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 is biased as demonstrated by the judge's rulings in an underlying civil rights case about prison conditions, and that the judge's rulings were motivated by a desire to get the case closed and deny complainant the right of appeal. Specifically, complainant contends that adequate evidence of the underlying claims was presented to the judge, but the judge failed to credit that evidence, and both granted the opposition's motion to dismiss and denied complainant's motion for reconsideration. Complainant also takes issue with statements made in my order dismissing a previously filed misconduct complaint against another judge.

Complainant explains that this misconduct complaint does not challenge the merits of the judge's rulings, and, indeed, claims of bias are cognizable misconduct claims even when related to a judge's rulings. However, my review of those rulings, attached to the complaint, provide no evidence that the judge is biased against complainant or that the judge's rulings were based on ill motive, as complainant claims. 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 further argument is that the judge's failure to recognize and credit the evidence presented demonstrates bias - or, put another way, the judge is biased because the judge ruled against complainant in the face of what complainant claims is adequate evidence. Regardless of how characterized, this

argument is based on the merits of the judge's rulings, and is not cognizable here. *See* Misconduct Rule 11(c)(1)(B) (claims "directly related to the merits of a decision or procedural ruling" may be dismissed). Complainant offers no other evidence besides the subject judge's contrary rulings to support these claims. This same reasoning extends to complainant's criticism of an earlier misconduct ruling. *See* Commentary to Misconduct Rule 3 (misconduct rulings are merits-related decisions).

Complainant contends that notice was not timely provided as to certain court documents and rulings, but offers no evidence that ties this allegation to the subject judge. Finally, complainant sets out further allegations about prison conditions, which are not cognizable here. *See* Misconduct Rule 4 (misconduct procedures apply only to federal judges).

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 23rd day of November, 2009.

/s/ Robert H. Henry

Honorable Robert H. Henry
Chief Circuit Judge