

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL
MISCONDUCT

No. 10-09-90071

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).

Complaint contends that the subject judge has refused to rule on pending matters in various underlying lawsuits, essentially a claim of delay. Complainant also alleges bias by the judge.

Delay can constitute misconduct, but only where a complainant demonstrates either that the delay is prompted by ill motive or that there has been “habitual delay in a significant number of unrelated cases.” Misconduct Rule 3(h)(3)(B). Complainant alleges intentional delay and complains of prejudice by the judge, but neither of these assertions is supported by factual allegations or other evidence. 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 conclusory assertions about bias and the judge refusing to rule do not constitute evidence that would support a reasonable inference of misconduct. Further, my review of the docket sheets for the cases involved belie complainant’s claims of delay. The subject judge and the district court judge assigned to the matter have responded regularly to motions and other matters in these cases.

Finally, complainant sets out claims against the Clerk of Court and Clerk’s Office deputies. These claims are not cognizable because these misconduct proceedings pertain only to federal judges. *See* Misconduct Rule 4.

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 21st day of December, 2009.

/s/ Robert H. Henry

Honorable Robert H. Henry
Chief Circuit Judge