

**JUDICIAL COUNCIL OF THE  
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL  
MISCONDUCT

No. 10-10-90005

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.supremecourt.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.

I have provided the complainant a copy of the Misconduct Rules, and the Rules are also accessible on the Tenth Circuit’s web page at: <http://www.ca10.uscourts.gov/misconduct.pdf>. 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, in three separate submissions constituting this complaint, contends that the subject judge failed to conduct a reported *in camera* review of certain evidence in an underlying case. Complainant points to the judge's resulting rulings and submits evidence in support of allegations that the *in camera* review did not occur as it should have. Based on the judge's rulings and these alleged facts, complainant also contends that "it is certain" the judge acted with ill motive.

To the extent that these claims take issue with the *in camera* review itself and/or the resulting rulings, they are not cognizable as misconduct because such claims 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.

While claims of ill motive and conspiracy may state valid claims for misconduct even when they are related to a judge's ruling, *see* Commentary to Misconduct Rule 3, the allegations of ill motive and conspiracy in this complaint fail because they are 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). Complainant's

implications and speculations about ill motive and conspiracy resulting from a contested *in camera* review and rulings contrary to complainant's interests do not suffice to raise such an inference.

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 19th day of April, 2010.

/s/ Robert H. Henry

Honorable Robert H. Henry  
Chief Circuit Judge