

**JUDICIAL COUNCIL OF THE  
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL  
MISCONDUCT

Nos. 10-09-90001 through  
10-09-90004

Before **HENRY**, Chief Judge.

**ORDER OF DISMISSAL**

Complainant has filed a complaint of judicial misconduct against three circuit judges and one 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 judges shall not be disclosed in this order. *See* Misconduct Rule 11(g)(2).

Complainant takes issue with rulings by the subject judges in an underlying civil rights case. Complainant argues that the district court's conclusions are hostile and purposefully egregious and that the court's rulings indicate both racial bias and mental disability on the part of the district judge. Complainant also argues that there is a conspiracy among all of the subject judges to deny complainant a day in court. As support for this alleged conspiracy, complainant contends that the judges have embezzled the fees complainant paid to the district court. Complainant concludes that the judges' rulings have allowed state officials to deprive complainant of constitutional rights, and requests that I review the underlying complaint, conclude it has merit, and appoint complainant legal counsel.

To the extent that complainant takes issue with or bases the claims presented on the merits of the subject judges' rulings, these claims are not cognizable as misconduct because they 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.

Complainant's claims of conspiracy, mental disability, and racial discrimination also fail. Although such claims can be cognizable, even when related to a judge's ruling, *see* Commentary to Misconduct Rule 3, these claims fail because they are 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). No such evidence has been offered in support of these claims.

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 judges 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 6th day of March, 2009.

/s/ Robert H. Henry

Honorable Robert H. Henry  
Chief Circuit Judge