

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL
MISCONDUCT

No. 10-10-90007

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.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 contends that the subject judge committed misconduct by conspiring with a named Assistant U.S. Attorney to confiscate complainant's prison mail. Complainant attaches exhibits in support of this claim which state that the judge recommended complainant's mail be inspected and confiscated following evidence that complainant may have been using the prison mail system to commit criminal acts. This claim fails because the allegations, even if true, do not indicate conduct that is either "prejudicial to the effective and expeditious administration of the business of the courts," or premised on ill motive. *See* Misconduct Rules 11(c)(1)(A), (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 19th day of April, 2010.

/s/ Robert H. Henry

Honorable Robert H. Henry
Chief Circuit Judge