

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL
MISCONDUCT

No. 10-10-90008

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 filed a civil rights law suit in July of 2009, and contends that, although the judge has been diligent in signing orders to collect the filing fee by way of collection from complainant's prison account, defendants have yet to be served in the case. Complainant reportedly has filed motions and sent letters asking for service to be effected, but has received no response. I have reviewed the docket sheet in this case and it confirms complainant's allegations, although I note that the judge recently denied two motions for appointment of counsel filed by complainant in July and October of last year.

This is essentially a claim of delay. While the court's delay in addressing complainant's case is regrettable, it is not misconduct. The Misconduct Rules are clear that, for delay to be considered misconduct, it must either be based on improper motive or be the result of "habitual delay in a significant number of unrelated cases." Misconduct Rule 3(h)(3)(B). Complainant contends that the judge's conduct amounts to "deliberate indifference," but offers no factual allegations to support that claim other than the delay itself. Misconduct Rule 11(c)(1)(D) requires complainants to support their claims with allegations sufficient "to raise an inference that misconduct has occurred." No such inference can be made here with regard to ill motive.

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