

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL
MISCONDUCT

No. 10-08-90099

Before **HENRY**, Chief Judge.

ORDER OF DISMISSAL

On October 25, 2008, I identified a complaint against the subject judge following notification that the judge had made campaign contributions to a presidential candidate. Such conduct is a violation of Canon 7 of the Code of Conduct for United States Judges. 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. In accordance with the misconduct rules, the name of the subject judge will not be disclosed in this order. *See* Misconduct Rule 11(g)(2).

The subject judge contacted me directly to report the campaign contributions. The contributions were also reported in a local newspaper story and then by newspapers nationwide. I subsequently received news of this conduct from other sources.

The subject judge reported making four political contributions during the judge's tenure as a federal judge. When the judge made the contributions, the judge believed that demonstrative political activity was prohibited but that private personal contributions to a political campaign were permissible. The judge was unaware that the contributions violated Canon 7. The subject judge is now aware that political campaign contributions violate the canon, and offered an apology for any resulting appearance of impropriety. The judge subsequently issued a public statement to the same effect. The judge has written the presidential candidate's campaign directing it to return the contributions, and the campaign has reportedly promised to return the contributions.

I also contacted the judge to further discuss this matter, both by several emails and later by another personal conversation. I reminded the judge of our obligation to avoid political activity and sent a copy to all judges in the circuit of a recent memo issued by the Chair of the Judicial Conference Committee on Codes of Conduct regarding this subject. The judge indicated the materials I sent

were read and understood, and that no similar contributions would be made in the future.

The judge's self-reported conduct, acknowledgment of the violation of Canon 7, and public statement of apology, coupled with her letter to the campaign requesting return of the de minimis contributions and the campaign's reported intention to return them, constitute "appropriate voluntary corrective action that acknowledges and remedies" the claim raised in my complaint. Misconduct Rule 11(d)(2).

Accordingly, this complaint is concluded. The Circuit Executive is directed to transmit this order to the subject judge and the Judicial Conference Committee on Judicial Conduct and Disability. *See* Misconduct Rule 11(g)(2).

So ordered this 11th day of November, 2008.

/s/ Robert H. Henry

Honorable Robert H. Henry
Chief Circuit Judge