

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL
MISCONDUCT

No. 2008-10-372-01

Before **HENRY**, Chief Judge.

ORDER OF DISMISSAL

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 Council of the Tenth Circuit, entitled *Rules Governing Complaints of Judicial Misconduct and Disability*; 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 exist, prior decisions of the full Judicial Council of this circuit consistent with those authorities may also govern my consideration of this complaint.

Complainant has received or has access to a copy of this circuit’s misconduct rules. In accord with those rules, the names of the complainant and subject judge shall not be disclosed in this order. *See* Misconduct Rule 4(f)(1).

Complainant first sets out allegations of misconduct in connection with a memorandum and order written by the respondent judge in connection with an underlying civil rights case filed by complainant. Complainant contends that the judge's memorandum contains false statements about the number of defendants involved in the case and whether they communicated with each other. These claims are not cognizable as misconduct because they are "directly related to the merits of a decision or procedural ruling." Misconduct Rule 4(c)(2). The policy behind this rule is that "the complaint procedure cannot be a means for collateral attack on the substance of a judge's rulings." Breyer Report, App. E., ¶ 2. As explained in this circuit's misconduct rules, only a court has the power to change a judge's ruling. Misconduct Rule 1(e). Neither I, acting as Chief Judge, nor the Judicial Council of the circuit - both charged with the determination of judicial misconduct matters under the federal statute - can do that.

Next, complainant contends that the judge is susceptible to bribery, referencing telephone calls with unidentified, unnamed persons in which "requests for a contribution" to the judge were made. This claim falls within the purview of the misconduct statute; however, complainant fails to provide any identifying information from which I could pursue a limited inquiry into the facts. As noted in the Breyer Report, a complaint must somehow identify witnesses or provide facts from which a witness could be identified before further investigation is required. *See* Breyer Report, App. E., ¶ 4. Lacking any

identifying information, I must conclude that this claim is frivolous as that term is defined in the misconduct rules, i.e., “wholly unsupported or lacking sufficient evidentiary support to raise an inference that some kind of cognizable misconduct has occurred.” Misconduct Rule 4(c)(3).

Finally, complainant levels complaints against the judge’s character, saying that the judge “would stoop to any level” to attain the judge’s goals, and “is a crooked judge [who] deserves to be criminally investigated.” I conclude that these claims are frivolous for the reason discussed above - they lack factual or evidentiary support. *See id.*

Accordingly, this complaint is dismissed. The Circuit Executive is directed to transmit this order to complainant and a copy to the respondent judge. To seek review of this order, complainant must file a petition for review by the Judicial Council. As set out in the misconduct rules, the petition should be in the form of a letter, and need not include a copy of the original complaint or this order. *See* Misconduct Rule 6. The petition must be filed with the Office of the Circuit Executive, at the address set out in the rules, within 30 days of the date of the letter transmitting this order. *Id.*

So ordered this 30 day of January, 2008.

/s/ Robert H. Henry

Honorable Robert H. Henry
Chief Circuit Judge