

**JUDICIAL COUNCIL OF THE  
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL  
MISCONDUCT

No. 2008-10-372-04

Before **HENRY**, Chief Judge.

**ORDER OF DISMISSAL**

Complainant has filed a complaint of judicial misconduct against three circuit judges 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).

The respondent judges are a panel of appellate judges who denied complainant's application for a certificate of appealability. Complainant contends that their ruling demonstrated bias, resulted in a violation of constitutional and civil rights, and prejudiced the application for a certificate of appealability. 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.

Accordingly, this complaint is dismissed. The Circuit Executive is directed to transmit this order to complainant and copies to the respondent judges. 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 19 day of February, 2008.

/s/ Robert H. Henry

Honorable Robert H. Henry  
Chief Circuit Judge