

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL
MISCONDUCT

No. 2008-10-372-12

Before **HENRY**, Chief Judge.

ORDER OF DISMISSAL

Complainant has filed complaints of judicial misconduct against three circuit judges, two district court judges, and two magistrate judges in this circuit. All of these judges handled parts of complainant's underlying habeas petition and subsequent appeal. Because the multiple complaints are duplicative, they were consolidated under above file number. My consideration of these complaints 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*; 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.

Complainant has received or has access to a copy of the misconduct rules. In accord with those rules, the names of the complainant and subject judges shall not be disclosed in this order. *See* Misconduct Rule 11(g)(2).

Complainant purports to file some of the complaints consolidated here on behalf of other named individuals. These individuals did not sign the complaints. Because addresses and signatures are required by the applicable rules, *see* Misconduct Rule 6(d), this order responds, and will be sent, only to complainant. Additionally, to the extent that complainant makes allegations in these complaints against persons other than federal judges, those allegations cannot be considered here. *See* Misconduct Rule 4.

The complaints filed against the respondent district and magistrate judges contain no allegations against these judges specifically. Instead, complainant alleges criminal activity on the part of state judges, public defenders, court clerks, and state agency personnel, and conspiracy among these individuals and the Ku Klux Klan. Lacking any actual allegations of misconduct, the complaints against these judges must be dismissed. *See* Misconduct Rule 6(b) (“A complaint must contain a concise statement that details the specific facts on which the claim of misconduct or disability is based.”). The complaints filed against the circuit judges contain only two allegations against these judges: first, an allegation of conspiracy with judges of the federal district court in connection with the rulings by both courts on complainant’s underlying habeas petition. Second, complainant

contends that the circuit judges' appellate ruling was a felonious act. The balance of the complaints against the respondent judges is filled with discussion and argument about the merits of complainant's underlying cases. These claims are all "directly related to the merits of a decision or procedural ruling" and therefore are not cognizable misconduct claims. Misconduct Rule 3(h)(3)(A). 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 the commentary to Misconduct Rule 3, "[t]his exclusion preserves the independence of judges in the exercise of judicial power."

To the extent that complainant's arguments about the underlying cases in conjunction with complainant's allegations of conspiracy with the KKK could be construed as claims of bias by the respondent judges, I conclude that any such implied claims lack the required evidentiary support. *See* Misconduct Rule 11(c)(1)(D)(stating that claims must be dismissed if based on "allegations lacking sufficient evidence to raise an inference that misconduct has occurred).

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 judges 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 29th day of April, 2008.

/s/ Robert H. Henry

Honorable Robert H. Henry
Chief Circuit Judge