

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL
MISCONDUCT

Nos. 2008-10-372-18 through
2008-10-372-24

Before **HENRY**, Chief Judge.

ORDER OF DISMISSAL

Complainant has filed a complaint of judicial misconduct against a circuit judge and six district judges 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*; 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 contends that the subject judges have intentionally delayed rendering decisions in two underlying district court matters, with the improper intent of excluding complainant from the practice of law. In an attempt to demonstrate a habitual pattern of delay, *cf.* Misconduct Rule 3(h)(3)(B), complainant lists five other cases by number, in which, it is alleged, these judges have also delayed in ruling. Finally, complainant implies that one of the subject judges has wrongly failed to recuse from an underlying matter, despite recusal from other cases involving complainant.

Complainant's claim of improper motive lacks any factual support whatsoever. Claims that lack "sufficient evidence to raise in inference that misconduct has occurred or that a disability exists," must be dismissed. Misconduct Rule 11(c)(1)(D). Similarly, the claim of habitual delay is unsupported by complainant's list of five case numbers without further explanation. Five cases would not satisfy the misconduct rules' comment that delay in a "significant number" of unrelated cases may amount to misconduct. *See* Misconduct Rule 3(h)(3)(B). And, while the misconduct rules say that a complaint should be concise, it also says that a complaint should detail the specific facts on which the claim of misconduct is based. *See* Misconduct Rule

6(b). This claim must also be dismissed. Misconduct Rule 11(c)(1)(D). Finally, the claim of delay and the implied claim that one of the subject judges should recuse in an underlying matter are not cognizable misconduct claims. *See* Misconduct Rules 3(h)(3)(A) (failure to recuse in a single case is “merits-related”), 3(h)(3)(B) (isolated allegations of delay are not misconduct).

Accordingly, this complaint is dismissed. 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 3rd day of June, 2008.

/s/ Robert H. Henry

Honorable Robert H. Henry
Chief Circuit Judge