

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL
MISCONDUCT

Nos. 10-08-90040 through
10-08-90041

Before **HENRY**, Chief Judge.

ORDER OF DISMISSAL

Complainant has filed a complaint of judicial misconduct against a district judge and a magistrate judge 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 judge shall not be disclosed in this order. *See* Misconduct Rule 11(g)(2).

Complainant contends that the subject judges have conspired to violate various laws and their duties as federal judges. In support of this claim, complainant offers the judges' rulings, both substantive and procedural, in complainant's underlying habeas corpus case. While claims of conspiracy, even when related to a judge's rulings, can constitute misconduct, *see* Commentary to Misconduct Rule 3, these claims of conspiracy fail for two reasons. First, without any evidence of conspiracy beyond the judges rulings, these claims lack the "sufficient evidence to raise an inference that misconduct has occurred" that is required by the Misconduct Rules. *See* Misconduct Rule 11(c)(1)(D). The judges' rulings do not constitute evidence of the conspiracies that complainant alleges sufficient to support a reasonable inference of misconduct.

Second, complainant's reliance solely on the judges' rulings compels my conclusion that these claims are "directly related to the merits of a decision or procedural ruling," Misconduct Rule 11(c)(1)(B), and are therefore not cognizable misconduct claims. 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.

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 judge 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 24th day of June, 2008.

/s/ Robert H. Henry

Honorable Robert H. Henry
Chief Circuit Judge