

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL
MISCONDUCT

No. 2008-10-372-06

Before **HENRY**, Chief Judge.

ORDER OF PARTIAL DISMISSAL

Complainant has filed a [complaint of judicial misconduct](#) against a [district 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 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 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 takes issue with the respondent judge's rulings in an underlying case. Complainant contends that these rulings demonstrate the judge's failure to review complainant's pleadings, apply the proper standard of review, or follow the applicable law. Complainant further asserts that these rulings demonstrate improper motive, i.e., to deny complainant access to the courts. Citing to the judge's ruling in a separate, unrelated, case, complainant contends that the judge has shown a "marked pattern and practice of arbitrarily and deliberately disregarding prevailing legal standards" and alleges resulting monetary damage.

Despite complainant's argument that legal rulings done with improper motive can form the basis of a misconduct complaint, these claims are dismissed. Complainant has offered no factual allegations or evidentiary support for the alleged improper motive other than the judge's rulings themselves. Therefore, 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. Further, citation to a single separate decision by the respondent judge does not demonstrate a pattern or practice. Lacking any other basis, the claim of improper motive is dismissed because it is "wholly unsupported." Misconduct Rule 4(c)(3).

Next, complainant contends that certain conduct by the respondent judge, as reported by the news media, “has brought disrepute to the judiciary.”

Complainant requests that the complaint be considered by the Judicial Council.

As to this claim only, I will take this complaint under advisement.

The balance of the 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 to the extent that it dismisses certain claims, 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 10th day of March, 2008.

/s/ Robert H. Henry

Honorable Robert H. Henry
Chief Circuit Judge