JUDICIAL COUNCIL OF THE TENTH CIRCUIT

IN RE: CHARGE OF JUDICIAL MISCONDUCT	No. 10-09-90024

Before **HENRY**, Chief Judge.

ORDER OF DISMISSAL

Complainant has filed a complaint of judicial misconduct against a bankruptcy 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* (the "Misconduct Rules"); 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).

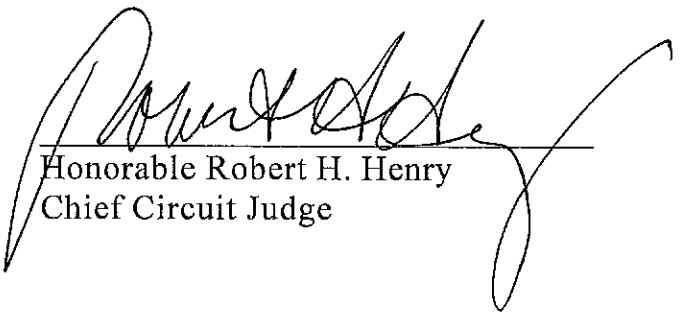
Complainant sets out factual allegations about an underlying bankruptcy matter culminating in an assertion that complainant was not given timely notice about a hearing at which he intended to present evidence of fraud. Complainant contends that, in light of the subject judge's alleged statements that complainant was to receive notice, and in light of the judge's "expedited" scheduling of the hearing, the notice was intentionally provided late in order to prevent complainant from testifying. Complainant offers no factual allegations which would support this claim of wrongful intent on the part of the subject judge. The Misconduct Rules require complainants to support their allegations with "sufficient evidence to raise an inference that misconduct has occurred." *See* Misconduct Rule 11(c)(1)(D).

Complainant also sets out claims against an unnamed member of the judge's staff, asserting that the staff person was rude and defensive towards complainant. These misconduct procedures apply only to the conduct of federal judges. *See* Misconduct Rule 4. Therefore, these claims cannot be addressed here.

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 11th day of May, 2009.



Honorable Robert H. Henry
Chief Circuit Judge