JUDICIAL COUNCIL OF THE
TENTH CIRCUIT

IN RE: CHARGE OF JUDICIAL MISCONDUCT	No. 10-10-90048

Before **BRISCOE**, Chief Judge.

ORDER

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 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.supremecourt.gov/publicinfo/breyer committeereport.pdf. To the extent that there are any relevant prior decisions of the full Judicial Council of this circuit which are consistent with those authorities, they may also govern my consideration of this complaint.

Complainant has been provided with a copy of the Misconduct Rules, and the Rules are also accessible on the Tenth Circuit's web page at: http://www.ca10.uscourts.gov/misconduct.php. 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 takes issue with rulings by the subject judge and contends that the rulings demonstrate the judge did not read underlying pleadings in a case brought by complainant. Complainant contends that the judge has violated the constitution, applicable laws and regulations, and is guilty of neglect of duty and abuse of discretion. These claims are not cognizable as misconduct because they are "directly related to the merits of a decision or procedural ruling." Misconduct Rule 11(c)(1)(B). As explained in the Breyer Report, this exclusion of matters related to the merits of underlying cases protects the independence of the judges deciding those cases. *See* Breyer Report, App. E., ¶ 2.

Complainant also contends that the judge is biased, operating under a conflict of interest, and participating in partisan politics. No allegations in the complaint are offered in support of these claims. While claims of bias, including conflict of interest, can state a valid claim for misconduct even when related to a judge's ruling, *see* Commentary to Misconduct Rule 3, and while participation in partisan politics would violate Canon 5 of the Code of Conduct for United States Judges, these claims fail because they are completely unsupported. 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).

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 subject 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 8th day of December, 2010.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe
Chief Circuit Judge