

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

Nos. 10-13-90001 through 10-13-90004

Before **BRISCOE**, Chief Judge.

ORDER

Complainant has filed three complaints of judicial misconduct, consolidated for review and disposition, against two district judges and two magistrate judges in this circuit. My consideration of these complaints 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/breyercommitteereport.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 these complaints.

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 judges shall not be disclosed in this order. *See* Misconduct Rule 11(g)(2).

In these three consolidated complaints, complainant takes issue with the judges' procedural and substantive rulings. Although complainant appears to recognize that the misconduct procedures cannot be used to complain about the merits of those rulings, the vast majority of complainant's allegations do just that. Complainant argues about the legal scope of the judges' review, alleges the denial of due process and other legal and constitutional violations as the result of the merits and timing of the judges' rulings, challenges the court's jurisdiction, and takes issue with the legal and factual underpinnings of the judges' rulings. These claims are not cognizable as misconduct because they are all "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 complains that one of the subject judges failed to rule on pending matters for a period of over six months. But complainant has not alleged improper motive or habitual delay as required by Misconduct Rule 3(h)(3)(B).

Similarly, complainant appears to contend that the judges rulings are the product of bias, but fails to support that claim. 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, these consolidated complaints are dismissed pursuant to Misconduct Rule 11(c). The Circuit Executive is directed to transmit this order to complainant and copies to the subject 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 19th day of February, 2013.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe
Chief Circuit Judge