

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-13-90035

Before **KELLY**, Circuit Judge.

ORDER

Complainant has filed a complaint of judicial misconduct against a circuit 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”), and specifically Misconduct Rule 25(f); 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 this complaint. The complaint was submitted to me in accord with Misconduct Rule 25(f).

The Misconduct Rules are available to complainants on the Tenth Circuit's web page at: <http://www.ca10.uscourts.gov/misconduct.php>. Paper copies are also furnished by the Circuit Executive's Office upon request. 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 an appellate ruling authored by the subject judge. To the extent that complainant challenges the content and correctness of the ruling and alleges that the subject judge "misrepresented" the facts of the underlying case, those 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 alleges that the judge knowingly misrepresented the facts, knowingly ruled contrary to applicable law, and tampered with evidence. Complainant contends this conduct violated complainant's due process and equal protection rights and constituted fraud on the court. While allegations of improper motive can state a valid claim for misconduct even when related to a judge's ruling, *see* Commentary to Misconduct Rule 3, 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). A contrary ruling, without more, does not support a reasonable inference of improper motive, tampering with evidence, or fraud.

Finally, complainant sets out allegations against a member of the court’s Clerk’s Office staff. These procedures apply only to claims against federal judges, *see* Misconduct Rule 4, and therefore those allegations will not be considered.

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 31st day of May, 2013.

/s/ Paul J. Kelly, Jr.

Honorable Paul J. Kelly, Jr.
Circuit Judge