

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL
MISCONDUCT

Nos. 10-10-90017 & 10-10-90018

Before **BRISCOE**, Chief Judge.

ORDER

Complainant has filed a complaint of judicial misconduct against a district judge and a magistrate 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/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.

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). Complainant's allegations against persons other than federal judges are not cognizable here, pursuant to Misconduct Rule 4.

Complainant first complains that one of the subject judges has not reviewed complainant's misconduct claims and contends such review is required by the Misconduct Rules. That review is my responsibility under Misconduct Rule 11 as Chief Judge of the Tenth Circuit; the subject judge is not charged with that duty. *See* Misconduct Rule 3(a).

Complainant next discusses correspondence with the district court Clerk's Office in regards an underlying civil rights case, contending that the subject judges have failed to either review the pleadings in that case, or to perform their supervisory responsibilities to insure diligent and proper review by others. These arguments are unsupported by factual allegations which would give rise to a reasonable inference of misconduct. *See* Misconduct Rule 11(c)(1)(D). Complainant has presented no facts which suggest that any failure to review complainant's pleadings exists or that the subject judges are involved in any decisions whether or when to review them.

The ultimate focus of this complaint seems to be a claim that the court has delayed in ruling on a specific motion filed by complainant in the underlying case. Delay can be the basis for a misconduct claim, but only where the

“allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” Misconduct Rule 3(h)(3)(B). Complainant has neither alleged nor provided factual support for either of these grounds.

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 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 26th day of July, 2010.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe
Chief Circuit Judge