

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL
MISCONDUCT

Nos. 10-10-90039 through 10-10-90041

Before **BRISCOE**, Chief Judge.

ORDER

Complainant has filed a complaint of judicial misconduct against two district judges and one 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 takes issue with the substitution of judges assigned to an underlying case brought by complainant, which substitution complainant says was "without authorization." Complainant also asserts that neither the defendants nor the court responded to a request for default judgment upon defendants' failure to timely respond to the lawsuit. Complainant contends that a settlement conference should not have been held in light of defendants' alleged default, and asserts that the judge and defense counsel were in collusion. Complainant claims that two of the subject judges obstructed justice by denying complainant due process. Complainant contends that the third judge has contributed to the alleged misconduct of the other subject judges by allowing the Clerk of court to enter allegedly wrongful orders. Complainant concludes by contending that the judges discriminated against complainant, in part based on a statement allegedly made by one of the subject judges during a settlement conference, which was that the judge and defense counsel were not going to let complainant, a pro se litigant, "beat them" for the monetary award complainant sought.

To the extent that these allegations take issue with rulings by the subject judges, or are based solely on those rulings, they are not cognizable as misconduct claims 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.

Allegations of bias and conspiracy can state valid claims for misconduct even when they relate to a judge’s ruling, *see* Commentary to Misconduct Rule 3. However, 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). In light of complainant’s allegation about the statement allegedly made by one of the subject judges, I conducted a limited inquiry as allowed by Misconduct Rule 11(b), by contacting both the subject judge and defense counsel and requesting their responses to this allegation. Both have responded, denying that the judge made such a statement.

Based on the representations in these responses, the Misconduct Rules allow me to conclude that the matter is not reasonably in dispute and dismissal of the conspiracy and bias claims is appropriate. *See* Commentary to Misconduct Rule 11. Complainant has not presented evidence which would support a reasonable inference of misconduct by this subject judge.

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 3rd day of February, 2011.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe
Chief Circuit Judge