JUDICIAL COUNCIL OF THE TENTH CIRCUIT

IN RE: CHARGE OF JUDICIAL MISCONDUCT

No. 10-10-90043

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). Allegations made against persons other than federal judges will not be considered under these misconduct procedures. See Misconduct Rule 4.

Complainant, party to an underlying lawsuit before the subject judge, challenges the judge's rulings in that case. Complainant contends that the rulings are "so off base" as to constitute unethical conduct, incompetence, and corruption. Complainant speculates that the rulings evidence a desire by the judge to hinder complainant and bring to question the judge's motivations and personal agenda. To the extent that these allegations take issue with the rulings themselves, 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.

To the extent that these allegations implicate incompetence or an improper motive by the judge, claims that may be cognizable even when related to a judge's rulings, *see* Commentary to Misconduct Rule 3, complainant has offered no support for these allegations. 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). Complainant's

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speculations and theory that there could be no other reason for the judge's rulings other than misconduct do not constitute evidence.

Similarly, complainant"suspects" that the judge engaged in ex parte communication with a party in the underlying case, and contends there is a conflict of interest with the judge due to the judge's unspecified ties with the community and the defendant (a federal government agency). These claims are also unsupported by any factual allegations or evidence of misconduct, and may be dismissed. *Id*.

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 23rd day of November, 2010.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe Chief Circuit Judge