

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

Nos. 10-11-90004 & 10-11-90005

Before **BRISCOE**, Chief Judge.

ORDER

Complainant has filed a complaint of judicial misconduct against one district judge 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).

Throughout the complaint, complainant takes issue with rulings by the subject judges in three underlying cases. 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.

Complainant also contends that, in light of their rulings, the subject judges conspired with opposing parties to deprive complainant of due process and other constitutional rights. Besides the rulings themselves, the only support offered for the claims of conspiracy are the facts that complainant proceeded in the underlying cases pro se and that one case was filed against a state court judge. Essentially, complainant claims bias on the part of the subject judges in light of these facts.

While allegations of conspiracy and bias can state valid claims of misconduct even when the allegations relate to a judge's rulings, *see* Commentary

to Misconduct Rule 3, these claims of conspiracy and bias fail because they are 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). There is no evidence in the complaint from which a reasonable inference of bias can be drawn here as a result of complainant’s pro se status or complainant’s filing suit against a judge. Similarly, complainant’s speculation about the subject judges’ motivations for their rulings is not evidence of conspiracy.

Complainant also alleges that the subject magistrate judge interrupted and was hostile towards complainant in a hearing on the issue of attorney’s fees. *See* Misconduct Rule 3(h)(1)(D) (misconduct includes treating litigants “in a demonstrably egregious and hostile manner”). I have reviewed the transcript of the hearing in question, and conclude that nothing in that transcript supports a claim of demonstrably egregious and hostile treatment.

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 23rd day of February, 2011.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe
Chief Circuit Judge