

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-11-90012

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/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 judge shall not be disclosed in this order. See Misconduct Rule 11(g)(2).

Complainant takes issue with various rulings by the subject judge following remand of the underlying case, contending that the judge is not complying with the court of appeals' order, and claiming that complainant has been wrongly incarcerated since 1999. These claims are not cognizable as judicial 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 alleges that the judge is biased, based on complainant's filing of an earlier misconduct complaint against this same judge and in light of complainant's lack of cooperation with the government at sentencing. Complainant contends that this bias is evidenced by the judge's delay in ruling on certain pending motions and other matters before the court. While allegations of bias can state valid claims for misconduct even when related to a judge's ruling, see Commentary to Misconduct Rule 3, these bias 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). There is no evidence that the

judge's rulings were motivated by complainant's failure to cooperate with the government or complainant's previous misconduct complaint. Further, delay can form the basis for a misconduct claim only if the delay is caused by an improper motive or there has been "a habitual delay in a significant number of unrelated cases." Misconduct Rule 3(h)(3)(B). Complainant has provided no factual allegations in support of either theory.

Finally, complainant includes allegations against various other persons, which cannot be addressed here. These misconduct procedures apply only to federal judges. *See* Misconduct Rule 4.

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 March, 2011.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe
Chief Circuit Judge