

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

Nos. 10-11-90023 through 10-11-90028

Before **BRISCOE**, Chief Judge.

ORDER

Complainant has filed a complaint of judicial misconduct against four district judges and two magistrate judges 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, a pro se prison litigant, names the subject judges in the complaint, but also names various Assistant United States Attorneys and a member of the F.B.I. Additionally, complainant sets out claims against a myriad of prison officials. These misconduct procedures apply only to federal judges, *see* Misconduct Rule 4. Claims against other individuals will not be considered here.

As to the subject judges, complainant takes issue with rulings by one of the magistrate judges, and generally claims that the judges' rulings in complainant's underlying case are illegal. 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 the rulings are intended to prolong the underlying case. Complainant alleges that the judges have unidentified friends

and family members working at the prison facility, and that those friends and family members have destroyed and withheld complainant's legal mail. These allegations of ill motive and conspiracy 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).

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 6th day of June, 2011.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe
Chief Circuit Judge