

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

Nos. 10-11-90040 & 10-11-90041

Before **BRISCOE**, Chief Judge.

ORDER

Complainant has filed a complaint of judicial misconduct against two district 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 filed a declaration with the initial misconduct complaint, and subsequently filed a proposed statement of facts. Both were considered in determining this matter. The majority of complainant's allegations are against persons other than the subject judges. These misconduct procedures apply only to federal judges, *see* Misconduct Rule 4, and therefore any allegations against state law enforcement officials, state judges, prosecutors, witnesses, and lawyers cannot be considered here.

The only remaining claims are allegations of conspiracy and wrongful motive. First, complainant contends that the subject judges knowingly caused an illegal arrest warrant to be issued and allowed other criminal legal processes against complainant to take place. Second, complainant contends that the judges are in a conspiracy with others to deny complainant's constitutional and statutory rights and to cover up these allegedly wrongful acts. However, no factual evidence of wrongful motive or conspiracy is offered outside of complainant's speculation and claims of factual innocence. These claims are not cognizable as misconduct because they are either "directly related to the merits of a decision or procedural ruling," Misconduct Rule 11(c)(1)(B), or 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). Complainant’s arguments with regard to the merits underlying the ongoing criminal case do not give rise to a reasonable inference of conspiracy or wrongful motive on the part of the subject judges.

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 29th day of July, 2011.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe
Chief Circuit Judge