

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-12-90016

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 contends that the subject judge delayed rulings in two underlying cases. The Misconduct Rules limit the consideration of claims of delay to two instances: where delay is the result of improper motive, and where the delay is caused by “habitual delay in a significant number of cases.”

Misconduct Rule 3(h)(3)(B). Claimant does not address the latter instance.

In a limited inquiry pursuant to Misconduct Rule 11(b), I have reviewed the docket sheets of the two cases identified in the complaint. As complainant admits, the first case was voluntarily dismissed after what appears to be service problems. The docket sheet for the second evidences one period of 8 months before the final ruling in the second case, but no inordinate delay. These circumstances do not support claims of improper motive. Claimant contends that the judge’s delays in ruling on these cases must have been intentional in light of the asserted validity of the claims presented in these cases. Complainant speculates that the judge was simply stonewalling or hoping that older witnesses would die. These allegations about the judge’s motive are unsupported by factual allegations or other evidence. The Misconduct Rules require complainants to come forward with “sufficient evidence to raise an inference that misconduct has occurred.” Misconduct Rule 11(c)(1)(D). Complainant’s speculations do not

provide support for such an inference. And, to the extent that complainant takes issue with the judge's rulings, those claims are "directly related to the merits of a decision or procedural ruling" and therefore not cognizable as misconduct. *See* Misconduct Rule 11(c)(1)(B).

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 9th day of July, 2012.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe
Chief Circuit Judge