

**JUDICIAL COUNCIL OF THE  
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE  
JUDICIAL CONDUCT AND  
DISABILITY ACT

Nos. 10-13-90005 through 10-13-90008

Before **KELLY**, Circuit Judge.

**ORDER**

Complainant has filed a complaint of judicial misconduct against four circuit judges in this circuit. Because the Chief Circuit Judge is disqualified in this matter, it has been submitted to the next most senior active circuit judge pursuant to Rule 25(f) of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (the “Misconduct Rules”).

My consideration of this complaint is governed by 1) the Misconduct Rules, issued by the Judicial Conference of the United States; 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/breyer>

committeereport.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 acknowledges that the Misconduct Rules do not allow claims related to the merits of subject judges' rulings, *see* Misconduct Rule 11(c)(1)(B), but contends that those rulings - in both underlying appeals and previous misconduct complaints - were the product of improper motive, including "deliberate ignorance" and "high bias." Complainant correctly asserts that allegations of improper motive in judges' rulings may be cognizable as misconduct claims, *see* Commentary to Misconduct Rule 3. However, complainant fails to support the allegations set out in this complaint with evidence other than the merits of the judges' rulings themselves. 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). Contrary rulings, without more, are not evidence of bias or other

improper motive. Complainant's claims fail because they are completely unsupported.

Complainant also sets out claims against the Circuit Clerk of Court, contending that the Clerk is the "functional equivalent of a judge." I reject that reasoning. 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 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 11th day of March, 2013.

/s/ Paul J. Kelly, Jr.

Honorable Paul J. Kelly, Jr.  
Circuit Judge