

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-13-90027

Before **BRISCOE**, Chief Judge.

ORDER

Complainant has filed a complaint of judicial misconduct against a magistrate 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, a prisoner, has learned that a court fee he directed to be applied to the filing of an underlying habeas case was seized for monies he allegedly owed in connection with the filing of a previous case. Complainant characterizes this action as conduct by the subject judge and contends that it was unauthorized and the product of bias against persons seeking to correct a miscarriage of justice.

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 allegations, without more, do not suffice to implicate the judge’s own conduct in the seizure of this filing fee, much less provide a basis to reasonably conclude that the action was the project of improper motive.

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 5th day of April, 2013.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe
Chief Circuit Judge