

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

Nos. 10-13-90030 through 10-13-90032
and 10-13-90040 through 10-13-90042

Before **BRISCOE**, Chief Judge.

ORDER

Complainant has filed two complaints of judicial misconduct against three circuit judges in this circuit arising out of the same underlying case. The two complaints are herewith consolidated for decision. My consideration of these complaints 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 these complaints.

The Misconduct Rules are available to complainants on the Tenth Circuit's web page at: <http://www.ca10.uscourts.gov/misconduct.php>. Paper copies are also furnished by the Circuit Executive's Office upon request. 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).

In these complaints, complainant takes issue with decisions by the panel of subject judges denying a petition for mandamus, a petition for rehearing en banc, and a motion for reconsideration. Complainant also contends that the panel ignored requests for clarification with regard to its decisions denying the petition for rehearing en banc and the motion for reconsideration. Complainant characterizes the panel's decisions on these matters as an abuse of discretion, a usurpation of authority, and a denial of due process. Complainant sets out lengthy arguments why complainant's pleadings were meritorious and why the panel's rulings are erroneous. Complainant takes issue with language in the panel's rulings threatening complainant with sanctions for continued repetitious and frivolous filings, characterizing it as vague, without proper notice, and injurious to complainant's character. Complainant contends that the rulings failed to address the specific allegations of the pleadings or provide analysis of the arguments asserted.

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 continues to set out allegations and claims against the judges who decided matters in the underlying district court case. Those allegations, which are repetitive of the numerous misconduct complaints complainant has already filed against those judges, will not be considered here.

Accordingly, these consolidated complaints are 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 3rd day of June, 2013.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe
Chief Circuit Judge