

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-13-90033

Before **BRISCOE**, Chief Judge.

ORDER

Complainant has filed a complaint of judicial misconduct against a circuit 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.

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 judge shall not be disclosed in this order. *See* Misconduct Rule 11(g)(2).

Complainant takes issue with a decision by the subject judge on one of complainant's previous misconduct matters, where the subject judge acted in place of the chief judge, who was disqualified. To the extent that complainant challenges the decision itself, this claim is not cognizable as misconduct because it is "directly related to the merits of a decision or procedural ruling," Misconduct Rule 11(c)(1)(B), which includes misconduct orders. *See* Commentary to Misconduct Rule 3(h)(3)(A). 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.

The main thrust of the complaint, however, is complainant's allegations of bias and "deliberate indifference" by the subject judge in deciding the previous misconduct matter, amounting to a fraud on the court. Complainant contends that the judge's determination was somehow involved with or influenced by a) a misconduct complaint that was allegedly sent but not processed by the Circuit Executive's Office earlier this year, b) the court of appeals' determination during that same time period of two appeals filed by complainant, and c) a visit to the Circuit Executive's Office by a member of complainant's family. However, complainant offers no evidence or supporting factual allegations about why those

matters would affect the judge's determination or result in bias. Complainant also contends that the chief judge somehow influenced the subject judge in this matter, but provides no evidence to support that claim.

While allegations of bias and conspiracy can state a valid claim for misconduct even when related to a judge's ruling, *see* Commentary to Misconduct Rule 3, these claims fail because they are completely 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).

Finally, complainant alleges claims against the Clerk of Court who complainant says "has the status of a *de facto* covered judge." Complainant also discusses the processing of various misconduct complaints and asserts that the Circuit Executive "sought to silently suppress" complainant's misconduct filings. This forum cannot be used to assert claims against individuals other than federal judges. 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 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 19th day of August, 2013.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe
Chief Circuit Judge