

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

Nos. 10-13-90036 through 10-13-90038

Before **BRISCOE**, Chief Judge.

ORDER

Complainant has filed a complaint of judicial misconduct against three circuit judges 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 judges shall not be disclosed in this order. *See* Misconduct Rule 11(g)(2).

Although complainant's allegations are somewhat difficult to understand, it appears that complainant takes issue with an appellate decision by a panel made up of the subject judges affirming the district court's denial of habeas relief. 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 contends that the circuit's required habeas forms act to deny complainant access to the courts. These allegations do not concern the conduct of federal judges and therefore are not cognizable in this forum. *See* Misconduct Rule 4. Complainant includes allegations against the district court, the underlying state court, and complainant's attorney. Again, complaints against persons other than federal judges are not cognizable here, *id.* Complaints against the district court and judges of that court will not be considered here, as complainant has not provided names or other identifying information. 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 alleges that the subject judges’ ruling is the result of a previous misconduct complaint filed against them by complainant. Complainant also contends that “a judge that had nothing to do with my case destroyed all my exhibits” when the underlying case was reportedly before the U.S. Supreme Court. Complainant “wonder[s]” if the Supreme Court was involved in a conspiracy with other individuals named in the complaint. While allegations of bias and conspiracy can state valid claims of misconduct even when related to a judge’s ruling, *see* Commentary to Misconduct Rule 3, these claims fail because they are unsupported by any evidence that would give rise to a reasonable inference of misconduct. *See* Misconduct Rule 11(c)(1)(D). Again, complaints against unnamed and otherwise unidentified judges will not be considered. *Id.*

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 3rd day of June, 2013.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe
Chief Circuit Judge