

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

Nos. 10-13-90047 through 10-13-90049

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).

Complainant contends that the subject judges treated complainant and/or complainant's attorney, in a "demonstrably egregious and hostile manner." *See* Misconduct Rule 3(h)(1)(D). The complaint alleges that this conduct took place during oral argument on a case filed and subsequently appealed by complainant. Complainant was not present for the oral argument, but alleges that family members and other individuals did attend the argument.

There are two parts to this claim; the first involves a motion to disqualify one of the subject judges. Complainant contends that a familial relationship between the subject appellate judge and the district court judge who determined the case in the court below resulted in a conflict of interest. That motion was verbally addressed and denied at oral argument by the subject judge who was the focus of the motion. Although complainant takes pains to explain that this misconduct complaint is not aimed at the merits of the judges' rulings, language in the complaint does just that. Therefore, to the extent that the complaint takes issue with the judge's ruling on the motion to disqualify, that 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), *see also* Misconduct Rule 3(h)(3)(A).

The second part of the main claim contends that, during oral argument, the subject judges engaged in “skits” and “unfortunate jovial banter” which “mock[ed] the substance and appropriateness” of the motion being addressed at oral argument. Complainant further contends that those present at oral argument were “shocked and mortified” by the judges’ alleged conduct. I have conducted a limited inquiry into this claim as provided by Misconduct Rule 11(b) by listening to the court’s recording of the oral argument in question. My review indicates a complete lack of any discernible movement or verbal banter which would support complainant’s allegations. Misconduct complainants must support their claims with enough evidence to “raise an inference that misconduct has occurred.” Misconduct Rule 11(c)(1)(D).

Complainant raises two additional claims which do not implicate conduct by the subject judges: first that the court failed to issue a written order on the subject judge’s denial of the motion to disqualify, and second that complainant’s requests to the court for a transcript of the oral arguments have not been answered. These are not cognizable misconduct claims.

Finally, complainant contends that two of the subject judges “themselves seemingly initiated a *de facto* court (cabal)” to hear several suits involving the same jurisdictional issue as one raised by complainant’s appeal. Complainant offers no evidence in support of this claim; therefore it is denied. *See* Misconduct Rule 11(c)(1)(D).

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 24th day of October, 2013.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe
Chief Circuit Judge