

**JUDICIAL COUNCIL OF THE  
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL  
MISCONDUCT

No. 10-10-90014

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 any relevant prior decisions of the full Judicial Council of this circuit consistent with those authorities exist, 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.pdf. 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 ruling by the subject judge in an underlying district court case, in which the court imposed sanctions for failure to follow court orders. Allegations challenging the ruling itself are not cognizable as misconduct claims 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 states that the judge “acted off the record to harass me,” but does not provide factual support. Similarly, complainant contends that the judge argued with complainant’s counsel on an unrelated matter, resulting in “personal anger” which, complainant alleges, lead to the negative ruling in complainant’s case. Again, few facts are offered in support of this claim. The Misconduct Rules define misconduct as including “treating litigants or attorney in a demonstrably egregious and hostile manner,” and rulings based on improper motive. *See* Misconduct Rule 3(h). However, the rules also require complainants to support their allegations with “sufficient evidence to raise an inference that misconduct has occurred,” Misconduct Rule 11(c)(1)(D). Complainant has not

done so here. I note that complainant is free to file another complaint against the subject judge with sufficient factual support to support an inference of misconduct.

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 respondent 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 9th day of June, 2010.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe  
Chief Circuit Judge