

**JUDICIAL COUNCIL OF THE  
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE  
JUDICIAL CONDUCT AND  
DISABILITY ACT

Nos. 10-10-90049 & 10-10-90050

Before **TACHA**, Circuit Judge.

**ORDER**

Complainant has filed a complaint of judicial disability against two circuit judges in this circuit. My consideration of this complaint is governed by 1) the 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 and disability, 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/public/info/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.

This complaint has been submitted to me for determination pursuant to Misconduct Rule 25(f). 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.php>. 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). To the extent that the complaint contains allegations against persons other than federal judges, those allegations will not be considered in this forum. *See* Misconduct Rule 4.

Complainant takes issue with statements made in an appellate opinion either authored or joined by the subject judges. Complainant contends that the statements at issue indicate that the judges are suffering from an "impairment of cognitive ability due to severe bias and prejudice." To the extent that complainant challenges the content of the statements made in the opinion, these claims are not cognizable as either misconduct or disability 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.

To the extent that complainant alleges bias and prejudice by the subject judges, these allegations are based on the merits of the statements made in the appellate opinion and complainant's arguments that the statements are factually and legally wrong. While allegations of bias can state valid claims for misconduct even when related to a judge's ruling, *see* Commentary to Misconduct

Rule 3, these allegations 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). Complainant’s contentions about the merits of the statements at issue here do not constitute evidence giving rise to a reasonable inference of either misconduct or disability.

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 6th day of December, 2010.

/s/ Deanell Reece Tacha

Honorable Deanell Reece Tacha  
Circuit Judge