

**JUDICIAL COUNCIL OF THE  
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE  
JUDICIAL CONDUCT AND  
DISABILITY ACT

Nos. 10-11-90016 & 10-11-90017

Before **BRISCOE**, Chief Judge.

**ORDER**

Complainant has filed a complaint of judicial misconduct against a district judge and 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 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.

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).

Complainant takes issue with myriad rulings by the subject judges in multiple underlying cases, claiming that the rulings violate federal law, federal court rules, and the Constitution. 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 these allegedly erroneous rulings demonstrate bias by the subject judges, characterizing the rulings as intentional and malicious obstruction of justice, arbitrary and capricious abuse of the legal process, and a cover up of racial discrimination and general injustice. While allegations of wrongful motive can state valid claims for misconduct even when related to a judge's ruling, *see* Commentary to Misconduct Rule 3, these claims fail because they are unsupported by anything other than the rulings themselves. 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). Nothing in the judge’s rulings gives rise to a reasonable inference of wrongful motive.

Finally, complainant makes allegations against defendants and counsel in the underlying lawsuits. These misconduct procedures apply to federal judges only. *See* Misconduct Rule 4.

This misconduct complaint is thirty-five pages long. The “Brief Statement of Facts” is thirteen pages long, far in excess of this circuit’s five-page limitation. *See* Misconduct Rule 6.1. The complaint was accepted for filing due to complainant’s assertion that extra length was needed in light of the number of underlying cases and their alleged complexity. My review of the complaint, however, belies the need for additional pages. This complaint is repetitive in the extreme; paragraph after paragraph contains the same allegations and contentions. Complainant is warned that future misconduct pleadings in violation of local rules will be returned without filing.

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 2nd day of May, 2011.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe  
Chief Circuit Judge