

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-11-90052

Before **BRISCOE**, Chief Judge.

ORDER

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

Complainant takes issue with rulings by the subject judge in an underlying case. To the extent that these arguments deal with the merits of the judge's decisions, they 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 rulings took advantage of complainant and demonstrate that the judge was angry. Complainant further speculates as to the judge's intentions in proceeding on the underlying case, and states a belief that the judge may be in communication with counsel for the defendants. While allegations of ill motive or conspiracy can state valid misconduct claims even when related to a judge's ruling, *see* Commentary to Misconduct Rule 3, these claims 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). Contrary rulings by themselves do not support claims of bias or other improper motive.

Complainant alleges a five to six-month delay in processing the underlying case, and contends that the delay both denies complainant due process and is a “subtle but very implied threat.” Delay in a single case cannot be the basis for a misconduct claim unless the complainant alleges improper motive or “habitual delay in a significant number of unrelated cases.” *See* Misconduct Rule 3(h)(3)(B). Because the allegation of improper motive here is, again, unsupported by factual allegations, it cannot provide the grounds for a cognizable misconduct claim based on delay. Complainant’s notation of another single case filed by complainant which is also allegedly delayed does not satisfy the Rule’s requirements regarding “a significant number of unrelated cases.”

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 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 31st day of October, 2011.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe
Chief Circuit Judge