

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-12-90006

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 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).

In the initial complaint, complainant sets out various allegations about the subject judge's conduct at a scheduling hearing. In sum, they are that: a) the judge's greeting and handshake were reluctant and condescending; b) the judge reprimanded complainant for putting a briefcase on the conference table; c) the judge intimidated and threatened complainant by suggesting the withdrawal of a stated claim of action and by stating that complainant might have to pay attorney's fees; and d) the judge pre-determined the case by discussing what complainant thought were irrelevant matters. Complainant characterizes the judge's conduct as hostile, arrogant, and humiliating, and contrary to the state bar's professional standards. Complainant also alleges personal bias.

Subsequently, complainant submitted additional materials which I have construed as a supplement to the complaint. Therein, complainant takes issue with the judge's ruling on a motion to recuse, contends the judge is biased, and asserts that the judge is bullying complainant.

First, to the extent that complainant's allegations challenge the judge's rulings or rely solely on those rulings as support for allegations of misconduct, such claims are not cognizable in these proceedings because they are "directly related to the merits of a decision or procedural ruling" by the subject judge.

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.

Next, while allegations of bias can state a valid claim for misconduct even when the alleged bias relates to a judge's ruling, *see* Commentary to Misconduct Rule 3, complainant's bias 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). Speculation about possible bias in light of the substance of the judge's rulings does not raise a reasonable inference of misconduct.

The Misconduct Rules state that "treating litigants . . . in an demonstrably egregious and hostile manner" can amount to misconduct. Misconduct Rule 3(h)(1)(D). In light of complainant's allegations about the judge's conduct, summarized above, I conducted a limited inquiry of all other persons present at the scheduling hearing, i.e., the subject judge and an attorney. Their responses directly and specifically contradict complainant's allegations of hostile treatment. Pursuant to the Misconduct Rules, under these circumstances I may conclude that no reasonably disputed issues exist, and may dismiss the complaint. *See* Commentary to Misconduct Rule 11.

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 27th day of July, 2012.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe
Chief Circuit Judge