

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-12-90014

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 alleges that, in connection with an underlying case, the subject judge has conspired with others to deny complainant access to past competency reports, to allow the filing of false competency reports, to order additional competency examinations, and exclude complainant from competency hearings. Complainant contends that the judge must have had *ex parte* communications with others about the examinations and reports, and challenges the judge's substantive and procedural rulings in the underlying case.

The only bases for these claims are the subject judge's rulings and complainant's own unsupported speculation. The Misconduct Rules are clear that claims involving the merits of underlying litigation are not cognizable, *see* 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's speculation about conspiracy and *ex parte* communications does not provide an adequate basis to support a reasonable inference that misconduct has occurred, *see* Misconduct Rule 11(c)(1)(D). Finally, to the extent that complainant's allegations implicate persons who are not federal judges, including appointed

criminal counsel and the district court Clerk, misconduct procedures may not be used to pursue those claims. *See* Misconduct Rule 4.

In a letter which I have construed as a supplement to the misconduct complaint, complainant asks me to consider whether Misconduct Rules 25 and 26 apply, impliedly requesting the disqualification of unnamed appellate judges and a transfer of this complaint to another circuit in light of allegedly exceptional circumstances. However, complainant offers no facts which would support the disqualification of any judge to consider this complaint under Misconduct Rule 25. I also decline to request that the Chief Justice transfer this matter to another circuit pursuant to Misconduct Rule 26; complainant's allegations do not support the claim of exceptional circumstances supporting such a transfer.

Finally, I note that these claims, albeit alleged based on different exhibits and rulings, are essentially duplicative of claims raised by complainant in a 2009 complaint against this same subject judge. Claimant has already been restricted from filing claims duplicative of earlier complaints, and should take heed of Misconduct Rule 10. That rule prohibits abuse of this judicial misconduct process by the filing of repetitive complaints.

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 9th day of July, 2012.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe
Chief Circuit Judge