

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-13-90046

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.

The Misconduct Rules are available to complainants on the Tenth Circuit’s web page at: <http://www.ca10.uscourts.gov/misconduct.php>. Paper copies are

also furnished by the Circuit Executive's Office upon request. 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 the subject judge's recommendation to dismiss an underlying case filed by complainant pro se. That claim is not cognizable as misconduct because it is "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.

In a lengthy discussion involving alleged Colorado Supreme Court disciplinary decisions and opinions about the subject judge on an internet website, complainant ascribes improper motive to the judge, including dishonesty and an undisclosed conflict of interest. These claims are based on complainant's stated assumptions about the judge's motives and professional associations, and conjecture about possible improper conduct. Complainant also asserts that the judge required the use of court forms and limited page lengths in the underlying pro se complaint, all in an effort to set the case up for dismissal. While allegations of improper motive can state a valid claim for misconduct even when the alleged conspiracy relates to a judge's ruling, *see* Commentary to Misconduct Rule 3, these claims fail because they are unsupported by sufficient factual

evidence. 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 speculations and conclusory allegations about the judge’s motives, without such evidence, do not support the claims set forth in the complaint or complainant’s request for an investigation of the judge.

Complainant also seeks an investigation of the Colorado Supreme Court’s discipline of state judges. The misconduct procedures apply only to the conduct of federal judges. Misconduct Rule 4.

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 15th day of October, 2013.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe
Chief Circuit Judge