

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL
MISCONDUCT

No. 10-10-90028

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).

Complainant takes issue with various rulings by the subject judge in connection with an underlying civil case, claiming that the court is misinterpreting and applying the law illegally, and seeking a change in venue. 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 alleges delay, bias, and failure or refusal to rule on the part of the subject judge. While allegations of bias can state a valid claim for misconduct 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). Other than the content of the judge’s rulings, which cannot form the basis for a misconduct claim, complainant’s allegations of bias, and refusal to rule lack factual or evidentiary support.

Similarly, claims of delay may constitute misconduct, but only where an improper motive is alleged or habitual delay in a significant number of cases is

shown, *see* Misconduct Rule 3(h)(3)(B). Complainant has not mentioned other cases and, as noted above, the allegations of bias are unsupported by any facts that would give rise to a reasonable inference of misconduct.

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 20th day of October, 2010.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe
Chief Circuit Judge