JUDICIAL COUNCIL OF THE
TENTH CIRCUIT

IN RE: COMPLAINT UNDER THE JUDICIAL CONDUCT AND DISABILITY ACT	No. 10-10-90057

Before **BRISCOE**, Chief Judge.

ORDER

Complainant has filed a complaint of judicial misconduct against a bankruptcy 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, a creditor in an underlying bankruptcy matter, contends that the subject judge was biased against complainant in determining that matter. Aside from complainant's challenges to the judge's factual and evidentiary rulings, which cannot form the basis of a misconduct claim, *see* Misconduct Rule 11(c)(1)(B) (claims which are "directly related to the merits of a decision or procedural ruling" are not cognizable as misconduct), complainant offers the following support for the allegations of bias.

In the underlying bankruptcy matter, assigned to the subject judge, the debtor was represented by an attorney whose brother is a bankruptcy judge in a neighboring federal judicial district. Without further factual support, complainant asserts that the debtor's counsel used his familial relationship to cause the neighboring judge to influence the subject judge to rule in favor of the debtor and against complainant. Complainant further contends that the two judges' professional relationship, by itself, would cause "any reasonable person" to conclude that the subject judge would be biased and should recuse from determining a matter in which the neighboring judge's brother was counsel. Finally, complainant argues that the hiring of this specific counsel is evidence of

wrongful intent by the debtor, because that attorney has less bankruptcy experience than a second attorney also hired by the debtor.

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, 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). Here, the fact that an attorney handling a bankruptcy case in one district is related to a bankruptcy judge in a nearby district is not, by itself, evidence sufficient to raise a reasonable inference of bias or judicial misconduct based on bias. There is no factual or evidentiary support for complainant's allegations that 1) the subject judge was influenced by the neighboring judge or by that judge's relationship with counsel for the debtor; 2) the subject judge made factual or evidentiary rulings "with malicious intent;" or 3) the two bankruptcy judges had what complainant characterized as a "closely associated" relationship such that recusal would be required. Complainant's speculations that counsel was hired specifically to influence the subject judge not only lacks factual support, but does not implicate misconduct by the judge, only the debtor. These procedures cover misconduct by federal judges only. *See* 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 24th day of January, 2011.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe
Chief Circuit Judge