

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-12-90003

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 contends that the subject judge had a conflict of interest with a defendant against whom complainant had filed a lawsuit, which lawsuit was assigned to the subject judge. The defendant was a deputy U.S. Marshal who had allegedly transported prisoners into the subject judge's courtroom. Complainant asserted that, therefore, the judge and the defendant had a working relationship "on a daily basis." Complainant contended that this relationship created a conflict of interest for the judge and tainted the judge's decisions in the case with personal bias for the defendant and against complainant.

I undertook a limited inquiry on this claim pursuant to Misconduct Rule 12(b), by writing to the subject judge and the defendant's counsel to inquire into the nature of the asserted relationship. Both the judge and the former defendant denied having any personal relationship with each other. Further, the judge declared that the judge would not know the defendant if the defendant were to appear before the judge. The defendant also opined that the judge did not know defendant's name.

Pursuant to Rule 11(c), I conclude that the subject of this claim - the alleged relationship between the judge and the defendant - is not reasonably in dispute. The fact that the defendant transported prisoners to the judge's

courtroom does not, by itself, create a relationship that would support complainant's claims of conflict and personal bias. Complainant has alleged no other basis on which the alleged relationship "on a daily basis" could rest. 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).

No other claims against the subject judge were contained in the complaint. 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 23rd day of March, 2012.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe
Chief Circuit Judge