

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-12-90025

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 alleged hostile treatment on the part of the subject judge during a court hearing, and further asserted claims of *ex parte* communications with prosecuting counsel and bias, saying that the judge had pre-judged complainant's case. I conducted a limited inquiry into these claims by asking for a response from the subject judge and the five other persons who were present at the hearing: the judge's assistant, a court clerk, a U.S. Marshal, and two prosecuting attorneys. All but one of the prosecuting attorneys answered my inquiry. After efforts to reach this individual failed, I concluded that this attorney is not reasonably accessible, as noted in the Commentary to Misconduct Rule 11(b).

All of the witnesses to the hearing dispute complainant's allegations of hostile treatment, *ex parte* communications, and bias. Under these circumstances, the Misconduct Rules allow me to conclude that such matters are not reasonably in dispute. *See id.* Accordingly, this complaint is dismissed pursuant to Misconduct Rule 11(c)(1)(D), as lacking sufficient evidence to raise a reasonable inference that misconduct occurred.

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 18th day of February, 2013.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe
Chief Circuit Judge