

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-10-90055

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 complains of “intentional delay of over 3 years” on the part of the subject judge in connection with an underlying civil rights case. My review of the docket sheet for the case complainant cites indicates that there are two cases involved here, both assigned to the subject judge. A related case was originally filed in 2007, and ultimately disposed of in late 2010. The current case began as a supplemental complaint against additional parties which was proposed by complainant in the 2007 case. The court directed that it be filed as a separate case.

Delay can form a cognizable misconduct claim, but only where a complainant can demonstrate either improper motive on the part of the subject judge or “habitual delay in a significant number of cases.” Misconduct Rule 3(h)(3)(B). Additionally, 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). The delay complained of in these cases has to do with the preparation of what is called a Martinez report. In both cases, defendants sought and were granted multiple extensions of time to prepare this report. These proceedings and the court’s grant of these extension requests do not provide factual support for complainant’s claims of intentional

delay such that a reasonable inference of misconduct exists. *See* Misconduct Rule 11(c)(1)(D). Complainant does not address the “significant number of cases” factor.

Complainant further asserts that the delay is the result of a conspiracy between the judge and an unnamed member of the state Attorney General’s office. No factual support is offered for this claim of conspiracy; it also fails for lack of evidence sufficient to give rise to an inference of misconduct. *Id.*

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