

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-10-90056

Before **BRISCOE**, Chief Circuit Judge, **O'BRIEN**, **TYMKOVICH**, **GORSUCH**,
HOLMES, Circuit Judges, **KRIEGER**, **MURGUIA**, **WHITE**, and **BROWNING**,
District Judges

ORDER

In December 2010, a former law clerk to a judge in this circuit filed a complaint of judicial misconduct or disability against the judge, pursuant to the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364 (the Act) and the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Misconduct Rules) promulgated by the Judicial Conference of the United States. Chief Circuit Judge Mary Beck Briscoe dismissed the complaint on April 7, 2011, concluding that the complained-of conduct did not give rise to a reasonable inference of misconduct or disability. The Judicial Council denied the complainant's petition for review on June 10, 2011.

On review of the matter pursuant to Misconduct Rule 21(b)(2) in May 2012, the Judicial Conduct and Disability Committee of the Judicial Conference

of the United States suggested to Chief Judge Briscoe that the Judicial Council reopen the proceedings to investigate whether the judge might be suffering from a mental disability. The Council agreed to reopen the matter. Chief Judge Briscoe then appointed a Special Committee to investigate the allegations and facts consistent with the JCUS Committee's inquiry. *See* Misconduct Rule 11(f).

The Misconduct Rules define disability as “a temporary or permanent condition rendering a judge unable to discharge the duties of the particular judicial office.” Rule 3(e). The Special Committee investigated the allegations through numerous interviews with court and chambers staff, other judges, and personnel with the U.S. Attorney's office and the U.S. Marshals Service. The Special Committee also engaged the services of three psychiatrists and a clinical neuropsychologist. One of the psychiatrists and the neuropsychologist evaluated the judge through psychological screening and other means, and both concluded that the judge did not have a mental disability that would prevent the judge from fulfilling the duties of office. Based on the opinions of the medical experts and the other evidence gathered during its investigation, the Special Committee concluded that the judge is not disabled and recommended that the Judicial Council dismiss the matter.

On consideration of the Special Committee's report and the evidence obtained in this matter, the Judicial Council agrees with the Committee that the

judge is not disabled as defined under the Misconduct Rules. The Council therefore dismisses the complaint pursuant to Misconduct Rule 20(b)(1)(A)(i).

So **ORDERED**, January 15, 2014, and
Entered on behalf of the Judicial Council
Of the Tenth Circuit

By:

A handwritten signature in cursive script, reading "Mary Beck Briscoe".

Honorable Mary Beck Briscoe
Chief Circuit Judge