

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-13-90034

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.

The Misconduct Rules are available to complainants on the Tenth Circuit’s web page at: <http://www.ca10.uscourts.gov/misconduct.php>. Paper copies are

also furnished by the Circuit Executive's Office upon request. 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 reportedly requested and paid for copies of documents in connection with an underlying district court case which is assigned to the subject judge, but did not receive the documents. Complainant wants both the judge and the Clerk of Court disciplined for this reported lack of response.

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). This claim fails because it is completely unsupported. Complainant has provided no factual allegations tying the reported lack of response to the judge's conduct. Additionally, complainant cannot assert claims against the Clerk of Court in this forum. *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 19th day of August, 2013.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe
Chief Circuit Judge