

**JUDICIAL COUNCIL OF THE  
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE  
JUDICIAL CONDUCT AND  
DISABILITY ACT

Nos. 10-11-90045 through 10-11-90047

Before **BRISCOE**, Chief Judge.

**ORDER**

Complainant has filed a complaint of judicial misconduct against three circuit judges 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 judges shall not be disclosed in this order. *See* Misconduct Rule 11(g)(2).

The subject judges denied Complainant's request for a Certificate of Appealability. Complainant contends that the panel's use of the phrase "rough justice" in its written decision showed complete disdain for complainant and the conduct being described, and also condoned and glamorized the conduct in question. Complainant asserts that this language amounts to "demonstrably egregious and hostile" treatment in violation of Misconduct Rule 3(h)(1)(D), and complains that complainant was denied due process. My review of the panel decision leads me to conclude that this language, without more, does not rise to the level of misconduct as set out in that rule, or otherwise. *See* Misconduct Rule 11(c)(1)(A). To the extent that complainant's due process argument implicates the panel's decision on the merits, that argument is not cognizable as misconduct. *See* Misconduct Rule 11(c)(1)(B).

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 judges 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 4th day of October, 2011.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe  
Chief Circuit Judge