

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: EDWARD W.
NOTTINGHAM

Judicial Misconduct Complaints
No. 2007-10-372-36
No. 2007-10-372-45
No. 10-08-90089
No. 10-08-90090

ORDER

In August 2007, following Denver media reports regarding activities by and allegations against Chief District Judge Edward W. Nottingham of the District of Colorado,¹ then Chief Circuit Judge Deanell Reece Tacha initiated misconduct complaint No. 2007-10-372-36 against Judge Nottingham. This complaint alleged that he spent more than \$3,000 at a topless nightclub in one evening, that he could not remember how he had spent that much money because he had a lot to drink,

¹ The Judicial Council has determined that Judge Nottingham's name should be disclosed in this order. *See Rules for Judicial-Conduct and Judicial-Disability Proceedings* (Misconduct Rules) 24(a)(2). The Council has also determined that this order should be issued without waiting for the expiration of any appeal rights under Misconduct Rules 21(b)(1)(A) and 22(c), but without prejudice to those rights. *See* Misconduct Rule 2(b).

The first two complaints addressed in this order were filed when the Tenth Circuit's former *Rules Governing Complaints of Judicial Misconduct and Disability*, approved by the Judicial Council in June 2003, were still in effect. On March 11, 2008, the nationally mandated *Rules for Judicial-Conduct and Judicial-Disability Proceedings* cited above superceded the previous rules.

and that this conduct may have brought disrepute to the Judiciary and constituted misconduct. Based on other allegations in the news media, the complaint also alleged that Judge Nottingham may have violated court policy by viewing sexually explicit images on his court computer. After receiving a response from Judge Nottingham, Chief Judge Tacha referred the matter to a Special Committee pursuant to 28 U.S.C. § 353(a).

On September 19, 2007, a complainant filed a misconduct complaint against Judge Nottingham alleging that he had parked illegally in a handicapped parking space and, in an ensuing conversation with her, had misused his authority by identifying himself as a federal judge and threatening to call the U.S. Marshals. Chief Judge Tacha also referred this complaint, No. 2007-10-372-45, to the Special Committee.

During the Special Committee's investigation of these matters, which included numerous interviews, review of credit card, telephone, and computer usage records, and inspection of computer hard drives, the Special Committee determined that Judge Nottingham may have made false statements in his initial response to the allegations regarding computer use and in a transcribed interview. The Special Committee expanded the scope of Complaint No. 2007-10-372-36 to include these alleged false statements.

In March 2008, Chief Circuit Judge Robert H. Henry, who succeeded Judge Tacha as chief circuit judge on January 1, 2008, and the Special Committee

learned from news reports of allegations that Judge Nottingham had solicited prostitutes. Following investigation into these allegations, informal proceedings pursuant to Misconduct Rule 5, and two hearings, Chief Judge Henry initiated misconduct complaint No. 10-08-90089 against Judge Nottingham on October 1, 2008, alleging that he had been a client of prostitution businesses in violation of Colorado law, had misused his court-owned cell phone in making calls to prostitutes, and had made false statements during the investigation. This matter was also referred to a new Special Committee.² On October 8, 2008, the two Special Committees submitted a joint report to the Judicial Council pursuant to 28 U.S.C. § 353(c).

On October 10, 2008, another misconduct complaint was filed against Judge Nottingham. The complainant alleged that she had been a prostitute and that Judge Nottingham had been one of her clients. She further alleged that on February 29, 2008, Judge Nottingham asked her to lie to federal investigators about the nature of their relationship and not to disclose that she was a prostitute whom he paid in exchange for sex.

Under 28 U.S.C. § 354, the Judicial Council has a variety of actions

² Because of the change in misconduct rules and chief judges, Chief Judge Henry replaced former Chief Judge Tacha on the second Special Committee, though Judge Tacha remained a member of the first Special Committee. The other members of the two committees remained the same. *See* Misconduct Rule 12(a).

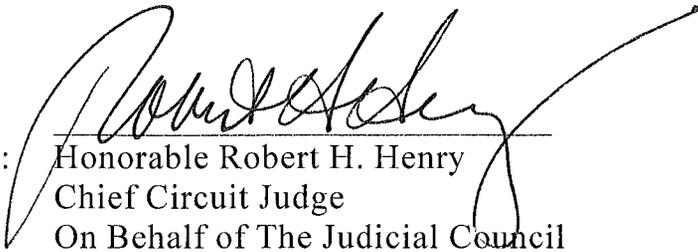
available to it on receipt of a special committee's report identifying judicial misconduct. These actions include dismissing the complaint on several bases; concluding the proceeding because of corrective action or intervening events; issuing public or private reprimands of the subject judge; ordering that no cases be assigned to the subject judge on a temporary basis; requesting the judge to voluntarily retire; and referring the matter to the Judicial Conference of the United States for determination of whether the matter warrants referral to the U.S. House of Representatives for impeachment. *See id.*; Misconduct Rule 20(b); *see also* 28 U.S.C. § 355. The Judicial Council cannot order the removal of an Article III judge. § 354(a)(3)(A).

Judge Nottingham resigned his commission from office as a United States district judge effective October 29, 2008. The Judicial Council finds that the resignation is in the interest of justice and the Judiciary.

The misconduct procedures apply only to federal judges. *See id.* § 351(d)(1); Misconduct Rule 4. Under the applicable federal law and misconduct rules, the Judicial Council has determined that these complaints should be concluded because intervening events, i.e., Judge Nottingham's resignation, have made further proceedings unnecessary. *See* Misconduct Rule 20(b)(1)(B).

The complaints are dismissed as moot. *See* 28 U.S.C. § 354(a)(1)(B). The Judicial Council will not exercise its discretion under Misconduct Rule 16(a).

So ordered this 30th day of October, 2008.


By: _____
Honorable Robert H. Henry
Chief Circuit Judge
On Behalf of The Judicial Council
Of the Tenth Circuit