

**JUDICIAL COUNCIL OF THE  
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE  
JUDICIAL CONDUCT AND  
DISABILITY ACT

No. 10-14-90039

Before **BRISCOE**, Chief Judge.

**ORDER**

Complainant has filed a complaint of judicial misconduct against a magistrate 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 “JCD 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 JCD Rules and this circuit’s local misconduct rules are available to complainants on the Tenth Circuit’s web page at: <http://www.ca10.uscourts.gov>

/ce/misconduct. 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* JCD Rule 11(g)(2).

Complainant, an attorney representing clients in an underlying case assigned to the subject judge, contends that the subject judge "purposefully" engaged in ex parte communication with opposing counsel. Complainant further alleges that the subject judge's relationship with opposing counsel gives an "appearance of impropriety" and demonstrates "bias" against complainant.

In support of complainant's contention, complainant provides a transcript. A review of the transcript indicates that a conversation regarding complainant's case arose during a conference for another case on the previous day. In the transcript, the subject judge explained that the conversation occurred after one of the attorneys present stated that he represented the complainant's client's interest. A review of the docket, in conjunction with the provided transcript, indicates that this attorney was complainant's co-counsel in both matters. The transcript further provides that the subject judge apologized to complainant to the extent that complainant felt that complainant should have been involved in the hearing and explained that it was the subject judge's understanding that all counsel were present.

The transcript refutes the assertion that the subject judge "purposefully" engaged in ex parte communications and the complainant's remaining claims of

improper motive are otherwise unsupported. The Rules require complainants to support their allegations with “sufficient evidence to raise an inference that misconduct has occurred.” *See* JCD Rule 11(c)(1)(D).

Accordingly, this complaint is dismissed pursuant to JCD 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* JCD 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 JCD 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 7th day of October, 2014.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe  
Chief Circuit Judge