

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

Nos. 10-14-90007 & 10-14-90008

Before **BRISCOE**, Chief Judge.

ORDER

Complainant has filed a complaint of judicial against a district judge and 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 judges shall not be disclosed in this order. *See* JCD Rule 11(g)(2).

In the majority of this complaint, complainant takes issue with alleged conduct of one of the subject judges during a settlement conference. Complainant asserts that the judge made various comments meant to intimidate complainant into dropping the underlying case, including alleged statements such as that the complainant would not be allowed an opening statement at trial, would be allowed no extensions of time, and was unlikely to win the case. Complainant also alleges that the judge pointed to statistics which indicated that pro se plaintiffs "never win," and used "bullying manners." Complainant contends that the judge tested complainant's English and insulted complainant as both a pro se plaintiff and naturalized citizen. Complainant alleges bias and retaliation by the judge.

On these allegations, I have conducted a limited inquiry as allowed by JCD Rule 12(b) by contacting all of the parties present at the settlement conference, including the judge's law clerk who attended all parts of the conference with the judge. None of the witnesses support complainant's allegations in any particular.

Under these circumstances, I conclude that there is no reasonable dispute about whether the alleged conduct took place. *See* Commentary to JCD Rule 11.

Further, complainant has no other support for the claims of bias and retaliation. The Rules require complainants to support their allegations with “sufficient evidence to raise an inference that misconduct has occurred.” JCD Rule 11(c)(1)(D).

Complainant also takes issue with various rulings by the subject judges, claims that they are contrary to the law and the facts, and that the rulings violate due process. These allegations are “directly related to the merits of a decision or procedural ruling,” JCD Rule 11(c)(1)(B),” and therefore must be dismissed. *Id.* The balance of the allegations are against persons other than the subject judges, specifically court staff and opposing counsel. These procedures apply only to federal judges. *See* JCD Rule 4.

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 judges 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 11th day of August, 2014.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe
Chief Circuit Judge