

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

Nos. 10-14-90009 & 10-14-90010

Before **BRISCOE**, Chief Judge.

ORDER

Complainant has filed a complaint of judicial misconduct 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).

Complainant takes issue with rulings by the subject judges dismissing various defendants in an underlying case, complains that the underlying complaint has been misconstrued, and asserts that the court has refused to set a trial date in the case. Complainant also challenges procedural rulings and conduct involving service of an amended complaint, attendance at hearings, status reports to the court, and service of pleadings by mail. These claims are not cognizable as misconduct because they are "directly related to the merits of a decision or procedural ruling." JCD Rule 11(c)(1)(B). As explained in the Breyer Report, this exclusion of matters related to the merits of underlying cases protects the independence of the judges deciding those cases. *See* Breyer Report, App. E., ¶ 2.

Complainant also speculates that the rulings and procedural matters in question were the result of improper motive, contending that 1) the judges have provided special treatment to "big business" as well as police officer defendants in the underlying case; 2) the judges have conspired to protect these defendants

and have assisted their counsel in getting them dismissed; and 3) the judges' rulings and conduct may have been the result of bribery or political motivation. Complainant further contends that the judges' conduct amounts to a violation of RICO, including tampering with evidence, and states that the judges should be criminally charged. Complainant speculates that, should the case go to trial, it is unlikely the judges will allow complainant to present evidence or otherwise prosecute the case.

While allegations of improper motive and conspiracy can state valid claims for misconduct even when related to a judge's rulings, *see* Commentary to JCD Rule 3, these claims fail because they are completely 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). Speculation and conclusory allegations about the basis for a judge's rulings does not constitute sufficient evidence.

The complaint also includes allegations against various attorneys involved with the underlying case. This misconduct procedure applies only to federal judges; those allegations will not be considered or discussed. *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 31st day of March, 2014.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe
Chief Circuit Judge