

**JUDICIAL COUNCIL OF THE  
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE  
JUDICIAL CONDUCT AND  
DISABILITY ACT

No. 10-14-90014

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/public/info/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 contends that the subject magistrate judge should recuse from handling matters in an underlying criminal case against complainant because the judge was formerly a prosecuting attorney in a separate case against complainant several years ago involving different charges. As a prosecutor, the judge also allegedly sought to have further charges lodged against complainant while in jail, which charges prison officials reportedly elected not to pursue.

The decision whether to recuse in a case is merits-based without a showing of improper motive. *See* JDC Rule 3(h)(3)(A). Complainant contends that the judge is not impartial, apparently based on the judge's alleged conduct in pursuing further charges against complainant in prison. 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).

I conclude that the reported conduct, even if true, does not present evidence sufficient to reasonably conclude that the judge is biased against complainant. Although the charges were not pursued by prison officials, that decision does not, without more, create a reasonable inference that the judge's conduct demonstrated bias against complainant at that time or has resulted in bias while dealing with procedural matters in complainant's current criminal action.

Complainant also takes issue with a ruling by the judge during a bond hearing. That claim is not cognizable here because it is “directly related to the merits of a decision or procedural ruling.” JCD Rule 3(h)(3)(A).

Finally, complainant makes allegations against complainant’s initial criminal counsel. This misconduct procedure applies to claims against federal judges only. *See* JDC 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 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 31st day of March, 2014.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe  
Chief Circuit Judge