

**JUDICIAL COUNCIL OF THE  
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE  
JUDICIAL CONDUCT AND  
DISABILITY ACT

No. 10-15-90012

Before **BRISCOE**, Chief Judge

**ORDER**

Complainant has filed a complaint of judicial misconduct and disability against a district 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 accordance 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, a pro se litigant, filed a complaint against the district judge who presided over his civil matter. Complainant alleges the subject judge engaged in judicial misconduct as a result of his "mental incompetence." Specifically, the complainant takes issue with the judge's opinion and judgment.

Complainant alleges the judge's rulings "reflect a willful disregard for the law[]." This claim is not cognizable as misconduct because it is "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 contends the subject judge's orders demonstrate the judge's mental incompetence and a conspiracy between the attorney for the government and the judge. While allegations of conspiracy and a judge's disability can state valid claims for misconduct even when the allegations relate to a judge's ruling, *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).

Complainant also contends the judge demonstrated a lack of impartiality when he quoted lyrics from a song with a drug reference. I conducted a limited inquiry of the docket and relevant orders. *See* JCD Rule 11(b) (“In determining what action to take under Rule 11(a), the chief judge may conduct a limited inquiry . . . The chief judge, or a designee, may . . . review transcripts or other relevant documents.”). My review of the record indicates that while the opinion did include lyrics from the song, the judge quoted only a few words, rather than the entire refrain complainant included in his complaint. Further, the quoted lyrics did not include a drug reference or infer that the complainant used drugs. Accordingly, complainant’s allegation lacks sufficient evidence to raise an inference that misconduct occurred or a disability exists. *See* JCD Rule 11(c)(1)(D).

Finally, complainant asserts the subject judge posted a letter from complainant on the docket as a “display of [the judge’s] omnipotence and invulnerability.” Even if complainant’s allegation regarding the letter is true, it is “not prejudicial to the effective and expeditious administration of the business of the courts and does not indicate a mental or physical disability resulting in an inability to discharge the duties of judicial office.” JCD Rule 11(c)(1)(A).

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 17th day of August, 2015.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe  
Chief Circuit Judge