

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

Nos. 10-16-90010 through 10-16-90013

Before **TYMKOVICH**, Chief Judge

ORDER

Complainant has filed a complaint of judicial misconduct against a district judge and three circuit judges in this circuit. My consideration of this complaint is governed by the misconduct rules issued by the Judicial Conference of the United States, entitled *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (the “JCD Rules”), the federal statutes addressing judicial conduct and disability, 28 U.S.C. § 351 *et seq.*, and relevant prior decisions of the full Judicial Council of this circuit that are consistent with those authorities.

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 judges shall not be disclosed in this order. *See* JCD Rule 11(g)(2).

Complainant, a non-litigant organization, has filed a second complaint against a district judge alleging the judge engaged in misconduct while presiding over a criminal

trial for multiple pro se defendants. To the extent that allegations against the district judge have previously been presented and dismissed, without new material information, those allegations will not be reconsidered. *See* JCD Rule 11(c)(2); *see also* JCD Rule 10(a) (advising that a “complainant who has filed repetitive, harassing, or frivolous complaints, . . . may be restricted from filing further complaints.”). In its present complaint, complainant alleges the circuit judges who affirmed the district judge’s decision have also engaged in misconduct. Specifically, complainant asserts the district and circuit judges conspired with an Assistant United States Attorney (AUSA) to intentionally misrepresent facts and subvert the law in their rulings or opinions in order to affirm the defendants’ convictions. Complainant adds that the district judge has failed to enforce the return of defendants’ seized property.

Insofar as complainant alleges that the subject judges subverted the law in their rulings and opinions or failed to enforce orders, 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); *see also* Commentary to JCD Rule 3 (“Any allegation that calls into question the correctness of an official action of a judge—without more—is merits-related”).

Complainant’s allegations that the subject judges conspired with the AUSA to intentionally misrepresent facts and ensure the defendants’ convictions are also not cognizable. While allegations of conspiracy can state a valid claim for misconduct even when the alleged conspiracy relates to a judge’s ruling, *see* Commentary to JCD Rule 3, this conspiracy claim fails because it is completely unsupported. Complainant’s

allegations are conclusory in nature and without “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 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 42 days after the date of the chief judge’s order. *Id.*

So ordered this 19th day of July, 2016.

/s/ Timothy M. Tymkovich

Honorable Timothy M. Tymkovich
Chief Circuit Judge