

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

Nos. 10-16-90025 through 10-16-90027

Before **TYMKOVICH**, Chief Judge

ORDER

Complainants have filed a complaint of judicial misconduct against a district judge, a bankruptcy judge and a magistrate judge 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 complainants and subject judges shall not be disclosed in this order. *See* JCD Rule 11(g)(2).

Complainants allege a bankruptcy judge, magistrate judge, and district judge engaged in misconduct in connection with their bankruptcy matter and its appeal.

Complainants assert that the bankruptcy judge failed to take remedial action when minutes from a hearing did not reflect the order of the court. They contend the bankruptcy judge relied upon false documents and granted the opposition's motion for summary judgment based on those false documents. Complainants assert the bankruptcy judge abused the court's discretion, suppressed or disregarded facts, protected the opposing party, and violated their due process rights. On appeal, complainants allege the magistrate judge erroneously denied complainants' request for oral argument and recommended denial of their appeal without considering the evidence. Complainants further allege that the district judge erroneously accepted the magistrate judge's recommendation and upheld the bankruptcy judge's ruling, which they assert denied their appeal without addressing fraud on the court. Complainants conclude that the judges did not adhere to the requirement of an unbiased tribunal, did not make decisions on the evidence presented, and did not prepare a record of the evidence or written findings.

The majority of complainants' claims, including their allegations that the judges' orders were somehow erroneous or improper, 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").

Insofar as complainants assert that the judges were biased, or that the bankruptcy judge covered up evidence, those allegations are unsupported. While allegations of bias and conspiracy can state valid claims for misconduct even when those allegations relate to a judge's ruling, *see* Commentary to JCD Rule 3, these claims fail because

complainants' failed to support their allegations with "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 complainants 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, complainants 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 17th day of August, 2016.

/s/ Timothy M. Tymkovich

Honorable Timothy M. Tymkovich
Chief Circuit Judge