

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

Nos. 10-19-90059

Before **Briscoe**, Circuit Judge

ORDER

Complainant has filed a complaint of judicial misconduct against a court of appeals 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 complainant and subject judges shall not be disclosed in this order. *See* JCD Rule 11(g)(2).

Complainant filed a complaint of misconduct against the circuit judge who reviewed and dismissed complainant’s previous misconduct matter. Complainant

contends the subject judge made a false statement of material fact in his dismissal order. Complainant asserts that in making this statement, the subject judge committed mail/wire fraud and violated the JCD Rules. He also contends the subject judge fabricated the fraudulent statement to prevent an investigation and to conspire to make a ruling.

Insofar as complainant is challenging the dismissal of a previous complaint, 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); *see also* Commentary to JCD Rule 4 (providing “a complaint challenging the correctness of a chief judge’s determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related . . . even though it does not concern the judge’s rulings in Article III litigation”).

Further, 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 4, this conspiracy claim fails because it is completely unsupported. The JCD 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); *see also* JCD Rule 6(b) (guiding complainants to include in their statement of facts what happened, when and where it happened, and any information that would help an investigator check the facts).

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 4th day of November, 2019.



Honorable Mary Beck Briscoe
Circuit Judge