

**JUDICIAL COUNCIL OF THE  
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE  
JUDICIAL CONDUCT AND  
DISABILITY ACT

Nos. 10-14-90049 & 10-14-90050

Before **BRISCOE**, Chief Judge

**ORDER**

Complainant has filed a complaint of judicial misconduct against a district judge and 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/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 accord 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, an attorney, contends the subject judges engaged in misconduct while presiding over his client's civil matter. Complainant asserts the presiding district judge failed to raise or address whether he or she should consider recusing from the matter "given [the] long-standing relationship with [the] defendant." Complainant alleges the magistrate judge demonstrated bias in favor of the defendant. He contends the magistrate judge made a comment and gave a look to opposing counsel that insinuated a "legal strategy." He also alleges the magistrate judge entered a public order, but provided the legal reasoning for that order in a private letter sent to the parties.

Pursuant to JCD Rule 11(b), I have conducted a limited inquiry into this matter by reviewing the record and requesting responses from the subject judges. During the course of my investigation, the magistrate judge retired. Accordingly, the claims against that subject judge are no longer cognizable and dismissed pursuant to JCD Rule 11(e). *See* Commentary to JCD Rule 11.

Complainant's remaining allegation, that the presiding district judge violated his or her ethical duty to *sua sponte* recuse, is not cognizable as misconduct. *See* JCD Rule 11(c)(1)(B). "An allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related." JCD Rule 3(h)(3)(A). The

complainant does not allege the presiding judge's decision was a result of an improper motive, e.g., a bribe, ex parte contact, or improper conduct. *See* JCD Rule 3(h)(3)(A). Accordingly, the 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.

Accordingly, these complaints are dismissed pursuant to JCD Rules 11(c) and 11(e). 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 26th day of May, 2015.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe  
Chief Circuit Judge