

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

Nos. 10-15-90014 through 10-15-90016

Before **KELLY**, Circuit Judge

ORDER

Complainant has filed a complaint of judicial misconduct against a circuit judge and two district judges 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 judges shall not be disclosed in this order. *See* JCD Rule 11(g)(2).

Complainant alleges three judges engaged in misconduct in connection with his criminal proceeding. First, complainant appears to take issue with the timing of his attorney's withdrawal from his case. Complainant contends that, despite the threats he made against his attorney, the presiding judge did not allow the attorney's withdrawal during trial, because he was using the attorney to "[do] what [the judge] wanted." Complainant adds that, after the judge permitted the withdrawal of his first attorney, the judge appointed an attorney who would be ineffective and told the new attorney not to provide notice to complainant. Complainant also alleges that the presiding judge conspired with the first attorney and others to omit a significant witness's testimony. Finally, complainant contends the presiding judge is racist and allowed the U.S. Attorney's Office to keep minorities off of the jury. As to the remaining subject judges, complainant asserts they conspired to cover up the presiding judge's racism and misconduct.

While allegations of conspiracy and racism can state valid claims for misconduct even when the alleged conduct relates 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); Breyer Committee Report, 239, F.R.D. 116, 242 (Sept. 2006) (“generally all a complaint . . . need do is assert that the complaint's allegation is supported by the transcript or by a named witness . . . [or] set[] forth allegations that are capable of being verified by looking at identifiable transcripts or questioning identifiable witnesses.”). Complainant has not provided any evidence to support his claims or identified any source of evidence to verify his allegations.

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 35 days of the date of the letter transmitting this order. *Id.*

So ordered this 13th day of May, 2015.

/s/ Paul J. Kelly, Jr.

Honorable Paul J. Kelly, Jr.
Circuit Judge