

# **Question**

What is the relationship test under RICO in the 10th Circuit?

# **Answer (Tenth Circuit)**

## **Short response**

The relationship test under RICO in the 10th Circuit requires that predicate acts be related to each other and to the enterprise, demonstrated by showing they have the same or similar purposes, results, participants, victims, or methods of commission, or are otherwise interrelated by distinguishing characteristics and are not isolated events. This test is part of the broader "continuity plus relationship" framework established by the Supreme Court, which the 10th Circuit has implemented through a multi-factor approach focusing primarily on duration and extensiveness.

## **Summary**

The relationship test under RICO in the 10th Circuit is a fundamental component of establishing a "pattern of racketeering activity," which is essential to any RICO claim. To satisfy this test, a plaintiff must demonstrate that the predicate acts are related to each other and to the enterprise itself. The 10th Circuit follows the Supreme Court's guidance that acts are related if they have "the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events." This relationship requirement works in conjunction with the continuity element to form the "continuity plus relationship" framework that defines a pattern of racketeering activity.

The 10th Circuit has developed a multi-factor approach to analyze the relationship prong, with particular emphasis on two key factors: duration and extensiveness. For extensiveness, the court considers the number of victims, number of acts, variety of acts, distinctiveness of injuries, and the complexity of the scheme. The court has consistently held that acts that are part of a common fraudulent scheme satisfy the relationship requirement, and that the relationship between predicate acts depends on which provision of RICO is being invoked (1962(a), (b), or (c)). While the 10th Circuit has not established a "bright-line test" for determining a pattern, its jurisprudence provides clear guidance on how the relationship test is applied in practice.

# **Background and Relevant Law**

## **Supreme Court Framework**

The relationship test under RICO stems from the Supreme Court's interpretation of what constitutes a "pattern of racketeering activity." In *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229 (1989), the Supreme Court established that a RICO pattern requires "continuity plus relationship." This framework has been consistently applied by the 10th Circuit in its RICO jurisprudence.

The Supreme Court defined the relationship requirement by borrowing from the Dangerous Special Offender Sentencing Act (Title X), stating that "criminal conduct forms a pattern if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events," [U.S. v. Knight, 659 F.3d 1285, 1288 \(10th Cir. 2011\)](#). This definition provides the foundation for the 10th Circuit's relationship test.

## **Tenth Circuit Implementation**

The 10th Circuit has consistently followed the Supreme Court's framework while developing its own approach to the relationship test. In [Resolution Trust Corp. v. Stone, 998 F.2d 1534 \(10th Cir. 1993\)](#), the court emphasized that the pattern element "requires the showing of a relationship between the predicates, ... and the threat of continuing activity"—that is, "continuity plus relationship."

## **Multi-Factor Approach**

The 10th Circuit employs a multi-factor approach in its relationship analysis, focusing primarily on two factors: duration and extensiveness. According to secondary source materials, "The Tenth Circuit has posited a multi-factor approach in its relationship analysis but looks mainly at two factors: duration and extensiveness." Extensiveness is determined by considering "the number of victims, the number of acts, the variety of acts, the distinctiveness of the injuries, and the complexity of the scheme."

This approach is reflected in [Tal v. Hogan, 453 F.3d 1244, 1268 \(10th Cir. 2006\)](#), where the court stated, "To determine continuity we examine both the duration of the related predicate acts and the extensiveness of the RICO enterprise's scheme." Although this case was primarily addressing the continuity prong, it demonstrates how the 10th Circuit's analysis of relationship and continuity often overlaps, as noted in [Tso v. Murray, Civil Action No. 16-cv-2480-WJM-CBS \(D. Colo. Feb 28, 2018\)](#) ("Relationship and continuity are two distinct requirements, though their proof will often overlap").

## **Common Fraudulent Scheme**

One clear principle that emerges from 10th Circuit jurisprudence is that acts that are part of a common fraudulent scheme satisfy the relationship requirement. In [Torwest DBC, Inc. v. Dick, 810 F.2d 925, 928 \(10th Cir. 1987\)](#), the court stated, "It is clear that when, as here, the acts are part of a common fraudulent scheme, they satisfy the relationship requirement of Sedima." This principle has been consistently applied in subsequent cases.

Similarly, in [Edwards v. First Nat. Bank, Bartlesville, Oklahoma, 872 F.2d 347 \(10th Cir. 1989\)](#), the court reaffirmed that "when, as here, the acts are part of a common fraudulent scheme, they satisfy the relationship requirement of Sedima."

## **Statutory Context-Specific Relationship**

The 10th Circuit has also recognized that the relationship requirement may vary depending on which provision of the RICO statute is being invoked. In [Torwest DBC, Inc. v. Dick, 628 F.Supp. 163, 165 \(D. Colo. 1986\)](#), the court explained:

"RICO also requires that the predicate acts must be related to the statutorily proscribed conduct. There must be 'continuity plus relationship.' The required relationship will be different, depending upon the prohibited conduct. Under section 1962(a), the predicate acts must be related in the sense that they produce proceeds which are then invested in an enterprise. Under section 1962(b), the predicate acts must be related to the objective of acquiring or maintaining control of an enterprise. Section 1962(c) requires all of the acts to be related to the conduct of the affairs of the enterprise."

This nuanced approach demonstrates the 10th Circuit's recognition that the relationship test is not applied uniformly across all RICO provisions.

## **Relationship to the Enterprise**

In addition to the relationship between predicate acts, the 10th Circuit also requires a relationship between the racketeering activity and the enterprise itself. In [U.S. v. Smith, 413 F.3d 1253, 1269 \(10th Cir. 2005\)](#), the court explained that "the Government must prove a relationship between the racketeering activity and the enterprise. [...] A nexus between the racketeering activity and the enterprise is established when there is 'a relation between the predicate offenses and the affairs of the enterprise.'" This nexus can be proven by demonstrating that the enterprise facilitated the commission of the predicate acts.

It is important to note that [U.S. v. Smith](#) was stated as overruled by [United States v. Garcia, 793 F.3d 1194 \(10th Cir. 2015\)](#). However, the overruling appears to be on other grounds as the relationship test principles from Smith continue to be cited in subsequent cases.

Similarly, in [U.S. v. Killip, 819 F.2d 1542 \(10th Cir. 1987\)](#), the court addressed the elements required to establish a RICO conspiracy, including

the requirement that a defendant "objectively manifested an agreement to willfully participate, directly or indirectly, in the affairs of the enterprise through the commission of two or more offenses which make up the pattern of racketeering activity." Although U.S. v. Killip was stated as overruled by United States v. Iverson, 818 F.3d 1015 (10th Cir. 2016), the basic principles regarding the relationship between predicate acts and the enterprise remain relevant.

## Application of the Relationship Test in Practice

### Recent Applications

Recent cases in the 10th Circuit have continued to apply the relationship test as part of the broader "pattern of racketeering activity" analysis. In [Nation v. Shah, 4:19-cv-00588-JDR-JFJ \(N.D. Okla. Oct 30, 2024\)](#), the court stated that while "[determining what constitutes a RICO pattern is no easy task," it is clear that a RICO pattern requires multiple "racketeering predicates" that "relate to each other and amount to a threat of continued racketeering activity." The court further elaborated that establishing the relationship between predicate acts "is not a cumbersome task" and "it is enough to show that the alleged predicate acts 'have the same or similar purposes, results, participants, victims, or methods of commission, or are otherwise interrelated' and are not isolated events."

### Different Types of Relationships

The 10th Circuit's application of the relationship test reveals several types of relationships that can satisfy the requirement:

- 1. Common Purpose or Design:** Acts that share a common purpose or are part of the same scheme satisfy the relationship requirement. In [Condict v. Condict, 826 F.2d 923 \(10th Cir. 1987\)](#), the court noted, "It is clear that when, as here, the acts are part of a common fraudulent scheme, they satisfy the relationship requirement of Sedima." However, it's important to note that [Condict v. Condict, 815 F.2d 579 \(10th Cir. 1987\)](#) was stated as superseded by Maxwell v. Wilson, 766 P.2d 909, 108 N.M. 65, 1988 NMSC 96 (N.M. 1988), though this appears to be on grounds unrelated to the relationship test.
- 2. Similar Methods, Victims, or Results:** Acts that employ similar methods, target similar victims, or produce similar results can satisfy the relationship requirement. In [Schrag v. Dingess, 788 F.Supp. 1543 \(D. Kan. 1992\)](#), the court explained that the relationship requirement is satisfied when the racketeering acts have "the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events."
- 3. Facilitation of Enterprise Activities:** Acts that facilitate the activities of the enterprise can establish the necessary relationship. As noted in

[U.S. v. Smith, 413 F.3d 1253 \(10th Cir. 2005\)](#), a nexus between the racketeering activity and the enterprise can be established by showing that the enterprise facilitated the commission of the predicate acts.

## Distinguishing Features of the 10th Circuit's Approach

### Quality Over Quantity

The 10th Circuit emphasizes the quality of the relationship between predicate acts over their quantity. In [Garbade v. Great Divide Min. & Mill. Corp., 645 F. Supp. 808, 810 \(D. Colo. 1986\)](#), the court noted, "In determining whether a pattern of racketeering activity exists, 'the number of predicate acts, if more than one, is irrelevant. The question is the nature of the conduct under all of the circumstances.'" This approach aligns with the Supreme Court's guidance that proof of two acts alone is insufficient to establish a pattern.

### Distinction Between Multiple Acts and Multiple Episodes

The 10th Circuit distinguishes between multiple acts within a single episode and multiple episodes with related purposes or methods. In [Grant v. Union Bank, 629 F.Supp. 570, 578 \(D. Utah 1986\)](#), the court explained, "The question here is whether the requisite 'continuity and relationship' set forth in Sedima to evidence a 'pattern' is established by a single episode or transaction (prime rate loan), even though supported by 'not less than two' predicate acts of mail or wire fraud. This Court is of the opinion that the concept of 'pattern' under civil RICO cases contemplates multiple transactions or episodes, not just multiple acts to promote the same transaction or episode."

### Focus on Ongoing Criminal Activity

The 10th Circuit emphasizes that RICO is aimed at ongoing criminal activity rather than isolated incidents. In [Cook v. Zions First Nat. Bank, 645 F.Supp. 423, 426 \(D. Utah 1986\)](#), the court stated, "To form a 'pattern,' the commission of predicate acts or episodes of criminality must be sufficiently continuous and interrelated. That is, a RICO or RICE 'pattern' requires planned, ongoing, continuing crime and the threat of continuing criminal conduct, as opposed to sporadic, isolated criminal episodes or events."

This focus is also evident in [Tal v. Hogan, 453 F.3d 1244, 1268 \(10th Cir. 2006\)](#), where the court noted that RICO "is not aimed at the isolated offender" and requires proof of "a series of related predicates extending over a substantial period of time," as well as "a showing that the predicates themselves involve a distinct threat of long-term racketeering activity... or that the predicates are a regular way of conducting the defendant's ongoing legitimate business or the RICO enterprise."

# **Relationship Test in Civil vs. Criminal RICO Cases**

The 10th Circuit applies the relationship test in both civil and criminal RICO cases, though the context may influence the analysis. In civil cases, the court often emphasizes the need to distinguish RICO violations from ordinary fraud claims. In [Bancoklahoma Mortgage Corp. v. Capital Title Co., 194 F.3d 1089 \(10th Cir. 1999\)](#), the court outlined the requirements for establishing a civil RICO claim under 18 U.S.C. 1962(c), including the need to show participation in the conduct of an enterprise through a pattern of racketeering activity.

In criminal cases, the focus often shifts to the defendant's participation in the enterprise's affairs through the commission of predicate acts. In [U.S. v. Zang, 703 F.2d 1186, 1194 \(10th Cir. 1982\)](#), the court held that "Any two of the counts of mail and wire fraud alleged in the indictment were sufficiently related to the enterprise to constitute a violation of RICO."

## **Challenges in Applying the RICO Relationship Test**

### **No "Bright-Line Test"**

The 10th Circuit has acknowledged that there is no "bright-line test" for determining what constitutes a pattern under RICO. In [Wichita Fed. Sav. & Loan v. Landmark Group, Inc., 674 F. Supp. 321, 331 \(D. Kan. 1987\)](#), the court noted, "The Tenth Circuit has yet to 'formulate a bright-line test' for determining the existence of a 'pattern'." This lack of a definitive test gives courts flexibility in applying the relationship test but may also lead to inconsistent results.

### **Distinguishing Between Relationship and Continuity**

While relationship and continuity are distinct requirements, the 10th Circuit has recognized that their proof often overlaps. In [Tso v. Murray, Civil Action No. 16-cv-2480-WJM-CBS \(D. Colo. Feb 28, 2018\)](#), the court stated, "Relationship and continuity are two distinct requirements, though their proof will often overlap."

### **Evolving Standards**

The standards for establishing a pattern of racketeering activity in the 10th Circuit have evolved over time. According to one secondary source, "The Tenth Circuit has devised a more demanding standard for showing a pattern." This suggests that the 10th Circuit may apply the relationship test more rigorously than some other circuits.

# **Specific Applications in Different Types of RICO Cases**

## **RICO Conspiracy Cases**

In RICO conspiracy cases, the 10th Circuit examines the relationship between the defendant's agreement and the pattern of racketeering activity. In [U.S. v. Killip, 819 F.2d 1542, 1548 \(10th Cir. 1987\)](#), the court explained that to establish a RICO conspiracy, the government must prove that "a defendant, by his words or actions, objectively manifested an agreement to willfully participate, directly or indirectly, in the affairs of the enterprise through the commission of two or more offenses which make up the pattern of racketeering activity in this case." Although this case was later overruled by [United States v. Iverson, 818 F.3d 1015 \(10th Cir. 2016\)](#), the basic principles regarding the relationship between a defendant's agreement and the pattern of racketeering activity remain relevant to understanding the relationship test in conspiracy cases.

## **Civil RICO Cases**

In civil RICO cases, the 10th Circuit often examines the relationship between the alleged predicate acts and the plaintiff's claimed injuries. In [Pitts v. Turner and Boisseau Chartered, 850 F.2d 650, 653 \(10th Cir. 1988\)](#), the court explained that "to establish a RICO pattern, a plaintiff must also demonstrate continuity, that is, 'the threat of continuing activity.'" This requirement helps ensure that civil RICO claims involve genuine patterns of racketeering activity rather than isolated incidents repackaged as RICO violations.

## **Mail and Wire Fraud as Predicate Acts**

When mail and wire fraud serve as predicate acts, the 10th Circuit examines the relationship between these acts and the enterprise's affairs. In [Professional Assets Manage. v. Penn Square Bank, 616 F.Supp. 1418, 1421 \(W.D. Okla. 1985\)](#), the court noted that "to prove a pattern in a criminal RICO case, the government must establish two or more predicate offenses which are related to the activities of the enterprise." When the predicate acts involve mail or wire fraud, the relationship to the enterprise may be established by showing that the fraudulent communications were made in furtherance of the enterprise's activities.

## **Exceptions and Caveats**

### **Single Scheme Limitation**

The 10th Circuit has indicated that a single fraudulent scheme with a definite endpoint may not satisfy the pattern requirement, even if it involves multiple predicate acts. In [Torwest DBC, Inc., v. Dick, 810 F.2d 925, 929 \(10th Cir. 1987\)](#), the court found that "a single fraudulent scheme that has a

definite purpose, the completion of which will end the scheme" does not constitute a pattern. However, the court also noted that "A more difficult question is presented when the RICO claim is based on one scheme involving one victim, but the plan contemplates open-ended fraudulent activity and does not have a single goal that, when achieved, will bring the activity to an end."

## **Acts Must Be More Than "Sporadic" or "Isolated"**

The 10th Circuit has emphasized that RICO is not aimed at sporadic or isolated criminal activity. In [Pitts v. Turner and Boisseau Chartered](#), [850 F.2d 650, 653 \(10th Cir. 1988\)](#), the court noted that RICO's legislative history "indicates that RICO does not apply to 'sporadic activity' or to the 'isolated offender.'" This requirement ensures that the relationship test focuses on genuine patterns of racketeering activity rather than disconnected or isolated acts.

## **"Higher Standard" in the Tenth Circuit**

According to secondary sources, "The Tenth Circuit has devised a more demanding standard for showing a pattern." This suggests that plaintiffs or prosecutors bringing RICO claims in the 10th Circuit may face a higher bar in establishing the relationship test compared to some other circuits. This higher standard may involve a more rigorous examination of the factors that establish the relationship between predicate acts.

## **Conclusion**

The relationship test under RICO in the 10th Circuit is a crucial component of establishing a "pattern of racketeering activity." Drawing from Supreme Court precedent, the 10th Circuit requires that predicate acts be related to each other and to the enterprise itself. Acts are considered related if they "have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events."

The 10th Circuit employs a multi-factor approach to analyze the relationship prong, focusing primarily on duration and extensiveness. Extensiveness is determined by considering the number of victims, number of acts, variety of acts, distinctiveness of injuries, and complexity of the scheme. The court has consistently held that acts that are part of a common fraudulent scheme satisfy the relationship requirement.

The relationship test varies depending on which provision of the RICO statute is being invoked, with different relationships required for violations of sections 1962(a), 1962(b), and 1962(c). While the 10th Circuit has not established a "bright-line test" for determining what constitutes a pattern, its jurisprudence provides substantial guidance on how the relationship test is applied in practice.

In summary, the 10th Circuit's relationship test under RICO is a nuanced and contextual inquiry that goes beyond simply counting predicate acts. It requires a meaningful connection between the acts themselves and between the acts and the enterprise, reflecting RICO's focus on organized, ongoing criminal activity rather than isolated or sporadic offenses.

## Legal Authorities

[Bancoklahoma Mortgage Corp. v. Capital Title Co., 194 F.3d 1089 \(10th Cir. 1999\)](#)

### **U.S. Court of Appeals — Tenth Circuit**

#### **Extract**

To establish a civil RICO claim under 18 U.S.C. 1962(c), BOMC must show that the Title Companies '(1) participated in the conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.' Resolution Trust Corp. v. Stone, 998 F.2d 1534, 1541 (10th Cir. 1993) (citing Phelps v. Wichita Eagle-Beacon, 886 F.2d 1262, 1273 (10th Cir. 1989)). The Supreme Court has adopted the 'operation or management' test to determine whether a defendant has 'participated in the conduct' of the affairs of a RICO enterprise. Id. (citing Reves v. Ernst & Young (Reves II), 507 U.S. 170, 113 S. Ct. 1163, 1170-73, 122 L. Ed. 2d 525 (1993)). For liability to be imposed under that test, the defendants must have participated in the operation or management of the RICO enterprise. Id.

#### **Summary**

Requirements for establishing a civil RICO claim under 18 U.S.C. 1962(c) in the Tenth Circuit, which includes demonstrating participation in the conduct of an enterprise through a pattern of racketeering activity. The passage specifically mentions the "operation or management" test, which is used to determine whether a defendant has participated in the conduct of a RICO enterprise. This test is crucial for establishing liability under RICO in the Tenth Circuit.

[Resolution Trust Corp. v. Stone, 998 F.2d 1534 \(10th Cir. 1993\)](#)

### **U.S. Court of Appeals — Tenth Circuit**

#### **Extract**

The Supreme Court has concluded that Congress intended that the pattern element 'requires the showing of a relationship between the predicates, ... and the threat of continuing activity'--that is, 'continuity plus relationship.'

## **Summary**

The passage from the Resolution Trust Corp. v. Stone case provides insight into the relationship test under RICO as interpreted by the Supreme Court. The Court has clarified that the "pattern" element of RICO requires not just two predicate acts but also a "relationship" between these acts and a "threat of continuing activity," which is referred to as "continuity plus relationship." This interpretation is applicable to all circuits, including the Tenth Circuit, as it is based on the Supreme Court's ruling.

[U.S. v. Smith, 413 F.3d 1253 \(10th Cir. 2005\)](#)

### **U.S. Court of Appeals — Tenth Circuit**

#### **Extract**

Next, Mr. Smith asserts that there is insufficient evidence of a nexus between KMD and the predicate acts. In a RICO prosecution, the Government must prove a relationship between the racketeering activity and the enterprise. *United States v. Killip*, 819 F.2d 1542, 1549 (10th Cir. 1987). A nexus between the racketeering activity and the enterprise is established when there is 'a relation between the predicate offenses and the affairs of the enterprise.' *Id.* In this case, the requisite relationship may be proved by demonstrating that KMD facilitated the commission of the predicate acts. See *id.*

## **Summary**

Clear explanation of the relationship test under RICO in the Tenth Circuit. It specifies that the government must prove a nexus between the racketeering activity and the enterprise, which is established by showing a relation between the predicate offenses and the affairs of the enterprise. This can be demonstrated by showing that the enterprise facilitated the commission of the predicate acts. This explanation is directly relevant to understanding the relationship test under RICO in the Tenth Circuit.

[Cook v. Zions First Nat. Bank, 645 F.Supp. 423 \(D. Utah 1986\)](#)

### **U.S. District Court — District of Utah**

#### **Extract**

To form a 'pattern,' the commission of predicate acts or episodes of criminality must be sufficiently continuous and interrelated. That is, a RICO or RICE 'pattern' requires planned, ongoing, continuing crime and the threat of continuing criminal conduct, as opposed to sporadic, isolated criminal episodes or events.

## **Summary**

The relationship test under RICO in the 10th Circuit requires that predicate acts must be continuous and interrelated. This means that the criminal activities must be planned, ongoing, and pose a threat of continuing criminal conduct, rather than being sporadic or isolated incidents. This interpretation aligns with the Supreme Court's guidance in *Sedima*, which emphasizes the need for continuity and relationship in establishing a pattern of racketeering activity.

[Nation v. Shah, 4:19-cv-00588-JDR-JFJ \(N.D. Okla. Oct 30, 2024\)](#)

## **U.S. District Court — Northern District of Oklahoma**

### **Extract**

While “[determining what constitutes a RICO pattern is no easy task,” it is clear that, at a minimum, a RICO pattern requires multiple “racketeering predicates” that “relate to each other and amount to a threat of continued racketeering activity.” ... It is not a cumbersome task to establish that one or more predicate racketeering acts are related; it is enough to show that the alleged predicate acts “have the same or similar purposes, results, participants, victims, or methods of commission, or are otherwise interrelated” and are not isolated events.

## **Summary**

The passage from the *Nation v. Shah* case provides insight into the relationship test under RICO in the Tenth Circuit. It specifies that to establish a pattern of racketeering activity, the predicate acts must relate to each other and pose a threat of continued racketeering activity. The relationship is established if the acts have similar purposes, results, participants, victims, or methods of commission, or are otherwise interrelated and not isolated events. This is a general requirement for RICO cases in the Tenth Circuit.

[Torwest DBC, Inc. v. Dick, 628 F.Supp. 163 \(D. Colo. 1986\)](#)

## **U.S. District Court — District of Colorado**

### **Extract**

RICO also requires that the predicate acts must be related to the statutorily proscribed conduct. There must be 'continuity plus relationship.' The required relationship will be different, depending upon the prohibited conduct. Under section 1962(a), the predicate acts must be related in the sense that they produce proceeds which are then invested in an enterprise. Under section 1962(b), the predicate acts must be related to the objective of

acquiring or maintaining control of an enterprise. Section 1962(c) requires all of the acts to be related to the conduct of the affairs of the enterprise.

## **Summary**

The passage provides insight into the relationship test under RICO by explaining that the predicate acts must demonstrate "continuity plus relationship." The relationship requirement varies depending on the specific section of RICO being applied. For instance, under section 1962(a), the acts must relate to generating proceeds for investment in an enterprise; under section 1962(b), they must relate to acquiring or maintaining control of an enterprise; and under section 1962(c), they must relate to conducting the affairs of the enterprise. This interpretation is crucial for understanding how courts in the Tenth Circuit might evaluate the relationship between predicate acts in RICO cases.

[Torwest DBC, Inc. v. Dick, 810 F.2d 925 \(10th Cir. 1987\)](#)

### **U.S. Court of Appeals — Tenth Circuit**

#### **Extract**

In this case, the court and the parties assumed for purposes of the court's ruling that defendants engaged in numerous racketeering acts. It is clear that when, as here, the acts are part of a common fraudulent scheme, they satisfy the relationship requirement of Sedima. See, e.g., Superior Oil Co. v. Fulmer, 785 F.2d 252 (8th Cir.1986).

## **Summary**

Clear indication of how the relationship requirement is understood in the Tenth Circuit, making it generally applicable to similar cases.

[Edwards v. First Nat. Bank, Bartlesville, Oklahoma, 872 F.2d 347 \(10th Cir. 1989\)](#)

### **U.S. Court of Appeals — Tenth Circuit**

#### **Extract**

It is clear that when, as here, the acts are part of a common fraudulent scheme, they satisfy the relationship requirement of Sedima. See, e.g., Superior Oil Co. v. Fulmer, 785 F.2d 252 (8th Cir.1986).

## **Summary**

In the Tenth Circuit, the relationship test under RICO is satisfied when the acts in question are part of a common fraudulent scheme. This aligns with

the interpretation of the relationship requirement as discussed in the Sedima case and referenced in other cases like Superior Oil Co. v. Fulmer.

[Professional Assets Manage. v. Penn Square Bank, 616 F.Supp. 1418 \(W.D. Okla. 1985\)](#)

### **U.S. District Court — Western District of Oklahoma**

#### **Extract**

As a matter of statutory definition (18 U.S.C. § 1961(5)), a 'pattern' must be established by 'at least two acts of racketeering activity.' 'To prove a pattern in a criminal RICO case, the government must establish two or more predicate offenses which are related to the activities of the enterprise.' U.S. v. Zang, 703 F.2d 1186, 1194 (10th Cir.1982), cert denied, 464 U.S. 828, 104 S.Ct. 103, 78 L.Ed.2d 107 (1983); accord, U.S. v. Weinstein, 762 F.2d 1522 (11th Cir.1985).

#### **Summary**

In the 10th Circuit, to establish a pattern of racketeering activity under RICO, the government must prove two or more predicate offenses that are related to the activities of the enterprise. This requirement is based on statutory definition and case law precedent within the 10th Circuit.

[Schrag v. Dinges, 788 F.Supp. 1543 \(D. Kan. 1992\)](#)

### **U.S. District Court — District of Kansas**

#### **Extract**

In H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989), the Supreme Court reiterated the well-established concept that racketeering acts form a 'pattern' in RICO where they exhibit 'continuity plus relationship.' Id. at 239, 109 S.Ct. at 2900. The 'relationship' requirement is satisfied when the racketeering acts have 'the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.' Id. at 240, 109 S.Ct. at 2901 (citing Sedima, 473 U.S. at 496 n. 14, 105 S.Ct. at 3285 n. 14).

#### **Summary**

Clear explanation of the "relationship" requirement under RICO, as interpreted by the Supreme Court in H.J. Inc. v. Northwestern Bell Tel. Co. This interpretation is applicable in the 10th Circuit as it is a federal standard.

[Grant v. Union Bank, 629 F.Supp. 570 \(D. Utah 1986\)](#)

**U.S. District Court — District of Utah**

**Extract**

On the other hand, two or more criminal transactions or episodes with the 'same or similar purposes, results, participants, victims or methods of commission,' if properly pleaded with the attendant racketeering activity, would raise a question of fact as to pattern. The question here is whether the requisite 'continuity and relationship' set forth in Sedima to evidence a 'pattern' is established by a single episode or transaction (prime rate loan), even though supported by 'not less than two' predicate acts of mail or wire fraud. This Court is of the opinion that the concept of 'pattern' under civil RICO cases contemplates multiple transactions or episodes, not just multiple acts to promote the same transaction or episode. Without such interrelated transactions or episodes, there would be no 'continuity and relationship.' This is what distinguishes RICO from the predicate acts.

**Summary**

Requirement of a "pattern of racketeering activity" under RICO, emphasizing the need for "continuity and relationship" among the acts. It clarifies that a pattern involves multiple transactions or episodes with similar purposes, results, participants, victims, or methods, rather than just multiple acts within a single transaction. This interpretation is crucial for understanding how courts in the 10th Circuit might evaluate the relationship aspect of a RICO claim.

[Agristor Leasing v. Meuli, 634 F.Supp. 1208 \(D. Kan. 1986\)](#)

**U.S. District Court — District of Kansas**

**Extract**

The threshold requirement under 18 U.S.C. § 1961(5) of establishing a 'pattern of racketeering activity' is the showing of at least two predicate acts. However, as the Supreme Court noted in Sedima, 'Proof of two acts of racketeering activity, without more, does not establish a pattern.' 473 U.S. at \_\_\_, n. 14, 105 S.Ct. at 3285, n. 14, 87 L.Ed.2d at 358, n. 14 (quoting 116 Cong.Rec. 18,940 (1970) (statement of Sen. McClelland)). 'The target of RICO is ... not sporadic activity, the infiltration of legitimate business normally requires more than one 'racketeering activity' and the threat of continuing activity to be effective. It is this factor of continuity plus relationship which combines to produce a pattern.'

## **Summary**

The relationship test under RICO involves demonstrating a "pattern of racketeering activity," which requires more than just two predicate acts. The concept of a "pattern" includes the factors of continuity and relationship, meaning that the acts must not be sporadic and should demonstrate a threat of continuing activity. This interpretation is consistent with the Supreme Court's guidance in Sedima and is applicable to RICO cases in general.

[Tso v. Murray, Civil Action No. 16-cv-2480-WJM-CBS \(D. Colo. Feb 28, 2018\)](#)

### **U.S. District Court — District of Colorado**

#### **Extract**

To prove a 'pattern of racketeering activity' a plaintiff or prosecutor must show both 'relationship' and 'continuity'—that the racketeering predicates are related, and that they either constitute or threaten long-term criminal activity. As the Supreme Court explained, Relationship and continuity are two distinct requirements, though their proof will often overlap. RICO's notion of relationship is [that] 'criminal conduct forms a pattern if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.'

## **Summary**

Clear explanation of the relationship test under RICO, as interpreted by the Supreme Court, which is applicable in the Tenth Circuit. It specifies that the relationship requirement is met if the criminal acts have similar purposes, results, participants, victims, or methods of commission, or are otherwise interrelated by distinguishing characteristics and are not isolated events.

[Condict v. Condict, 815 F.2d 579 \(10th Cir. 1987\)](#)

### **U.S. Court of Appeals — Tenth Circuit**

#### **Extract**

In this case, the court and the parties assumed for purposes of the court's ruling that defendants engaged in numerous racketeering acts. It is clear that when, as here, the acts are part of a common fraudulent scheme, they satisfy the relationship requirement of Sedima. See, e.g., Superior Oil Co. v. Fulmer, 785 F.2d 252 (8th Cir. 1986). However, to establish a RICO pattern, a plaintiff must also demonstrate continuity, that is, 'the threat of continuing activity.' Sedima, 105 S.Ct. at 3285 n. 14. This element is derived from RICO's legislative history, which indicates that RICO does not apply to 'sporadic activity' or to the 'isolated offender'.

## **Summary**

The passage provides insight into the relationship test under RICO in the Tenth Circuit by explaining that acts must be part of a common fraudulent scheme to satisfy the relationship requirement. Additionally, the passage emphasizes the need to demonstrate continuity, meaning a threat of continuing activity, to establish a RICO pattern. This aligns with the legislative history of RICO, which targets more than sporadic or isolated activities.

[U.S. v. Knight, 659 F.3d 1285 \(10th Cir. 2011\)](#)

### **U.S. Court of Appeals — Tenth Circuit**

#### **Extract**

A prosecutor “must show that the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity.” Id. Although the two “constituents of RICO’s pattern requirement”—continuity and relatedness—are analytically distinct, “in practice their proof will often overlap.” Id. At issue here is the “relatedness” aspect of RICO’s pattern requirement. Attempting to offer guidance on RICO relatedness, H.J. Inc. arrived at a working definition by borrowing from a parallel statute, the Dangerous Special Offender Sentencing Act (Title X). Title X—like RICO, a provision of the Organized Crime Control Act of 1970—defines a “pattern” with some specificity: [C]riminal conduct forms a pattern if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.

## **Summary**

The passage from U.S. v. Knight provides insight into the relationship test under RICO in the Tenth Circuit by explaining the relatedness requirement. It states that for racketeering predicates to be considered related, they must have the same or similar purposes, results, participants, victims, or methods of commission, or be interrelated by distinguishing characteristics and not be isolated events. This interpretation is based on the guidance from H.J. Inc. and the Dangerous Special Offender Sentencing Act (Title X). The passage is relevant as it directly addresses the relatedness aspect of RICO’s pattern requirement in the Tenth Circuit.

[Condict v. Condict, 826 F.2d 923 \(10th Cir. 1987\)](#)

### **U.S. Court of Appeals — Tenth Circuit**

## **Extract**

In this case, the court and the parties assumed for purposes of the court's ruling that defendants engaged in numerous racketeering acts. It is clear that when, as here, the acts are part of a common fraudulent scheme, they satisfy the relationship requirement of Sedima. See, e.g., Superior Oil Co. v. Fulmer, 785 F.2d 252 (8th Cir.1986).

## **Summary**

Clear example of how the relationship requirement is applied in practice within the Tenth Circuit.

[Garbade v. Great Divide Min. & Mill. Corp., 645 F. Supp. 808 \(D. Colo. 1986\)](#)

### **U.S. District Court — District of Colorado**

## **Extract**

In determining whether a pattern of racketeering activity exists, 'the number of predicate acts, if more than one, is irrelevant. The question is the nature of the conduct under all of the circumstances.' Torwest DBC, Inc. v. Dick, et al., 628 F.Supp. 163, 165 (D.Colo.1986).

## **Summary**

The passage provides insight into how the Tenth Circuit approaches the determination of a "pattern of racketeering activity" under RICO. It emphasizes that the focus is on the nature of the conduct under all circumstances, rather than merely the number of predicate acts. This suggests a qualitative rather than quantitative analysis, which is crucial for understanding the relationship test under RICO in this jurisdiction.

[Wichita Fed. Sav. & Loan v. Landmark Group, Inc., 674 F. Supp. 321 \(D. Kan. 1987\)](#)

### **U.S. District Court — District of Kansas**

## **Extract**

The Tenth Circuit has yet to 'formulate a bright-line test' for determining the existence of a 'pattern'. Torwest DBC, Inc., v. Dick, 810 F.2d 925, 929 (10th Cir.1987). In Torwest, it found what was not a pattern: a single fraudulent scheme that has a definite purpose, the completion of which will end the scheme. In reaching this decision, the Tenth Circuit contrasted the type of scheme involved in this case, stating: A more difficult question is presented when the RICO claim is based on one scheme involving one victim, but the

plan contemplates open-ended fraudulent activity and does not have a single goal that, when achieved, will bring the activity to an end.

## **Summary**

The Tenth Circuit has not established a definitive test for determining a "pattern" under RICO. However, it provides insight into what does not constitute a pattern, specifically a single scheme with a definite end. The court also acknowledges the complexity of cases involving ongoing schemes without a single goal, suggesting that such cases might meet the continuity requirement of a RICO pattern.

[Pitts v. Turner and Boisseau Chartered, 850 F.2d 650 \(10th Cir. 1988\)](#)

### **U.S. Court of Appeals — Tenth Circuit**

#### **Extract**

A violation of section 1962(c) thus 'requires (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.' Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 105 S.Ct. 3275, 3285, 87 L.Ed.2d 346 (1985). RICO defines racketeering activity as, *inter alia*, any act that is indictable under 18 U.S.C. Sec. 1341 (mail fraud) or 18 U.S.C. Sec. 1343 (wire fraud). See 18 U.S.C. Sec. 1961(1)(B). RICO also states that a ' "pattern of racketeering activity" requires at least two acts of racketeering activity.' 18 U.S.C. Sec. 1961(5). ... [T]o establish a RICO pattern, a plaintiff must also demonstrate continuity, that is, 'the threat of continuing activity.' Sedima, 105 S.Ct. at 3285 n. 14. This element is derived from RICO's legislative history, which indicates that RICO does not apply to 'sporadic activity' or to the 'isolated offender'. *Id.* The continuity requirement has been the source of considerable difficulty. Courts generally agree that to make an adequate showing of continuity under Sedima, a plaintiff must demonstrate some facts from which at least a threat of ongoing illegal conduct may be inferred. A scheme to achieve a single discrete objective does not in and of itself create a threat of ongoing activity, even when that goal is pursued by multiple illegal acts, because the scheme ends when the purpose is accomplished.

## **Summary**

Requirements for establishing a RICO violation under section 1962(c), which includes demonstrating a pattern of racketeering activity. The passage specifically addresses the continuity requirement, which is crucial for establishing a pattern. It explains that continuity involves showing a threat of ongoing illegal conduct, rather than isolated or sporadic acts. This is relevant to understanding the relationship test under RICO in the Tenth Circuit, as it provides insight into how courts assess the continuity and pattern of racketeering activity.

[U.S. v. Killip, 819 F.2d 1542 \(10th Cir. 1987\)](#)

**U.S. Court of Appeals — Tenth Circuit**

**Extract**

The court instructed the jury that to establish a RICO conspiracy the Government was required to show three elements: (1) a conspiracy was formed to participate in RICO activities; (2) the defendant agreed to join the conspiracy; and (3) one or more of the conspirators committed at least one overt act. The specific instructions on the second element read: [The Government must prove that] a defendant, by his words or actions, objectively manifested an agreement to willfully participate, directly or indirectly, in the affairs of the enterprise through the commission of two or more offenses which make up the pattern of racketeering activity in this case, that is, kidnapping, attempted arson, travel in interstate commerce related to controlled substances in violation of federal laws, possession of controlled substances with intent to distribute in violation of federal law, and conspiracy to distribute controlled substances in violation of federal laws.

**Summary**

Detailed explanation of the elements required to establish a RICO conspiracy in the Tenth Circuit, specifically focusing on the necessity for a defendant to have agreed to participate in the enterprise's affairs through a pattern of racketeering activity. This directly relates to the relationship test under RICO in this jurisdiction.

[U.S. v. Zang, 703 F.2d 1186 \(10th Cir. 1982\)](#)

**U.S. Court of Appeals — Tenth Circuit**

**Extract**

Any two of the counts of mail and wire fraud alleged in the indictment were sufficiently related to the enterprise to constitute a violation of RICO. Based on the instructions as a whole, there was no need to explain specifically the required relationship.

**Summary**

In the Tenth Circuit, for a RICO violation, any two counts of mail and wire fraud that are alleged in the indictment are considered sufficiently related to the enterprise. This suggests that the relationship test under RICO in the Tenth Circuit does not require a detailed explanation of the relationship between the acts and the enterprise, as long as they are part of the indictment and involve mail or wire fraud.

[Phelps v. Wichita Eagle-Beacon, 886 F.2d 1262 \(10th Cir. 1989\)](#)

## **U.S. Court of Appeals — Tenth Circuit**

### **Extract**

The Supreme Court has recently held that a RICO violation does not require more than one scheme. *H.J. Inc. v. Northwestern Bell Telephone Co.*, --- U.S. ----, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989). The Court there reiterated its prior holding that all that is required to constitute a pattern are two elements--'continuity plus relationship.' *Sedima*, 473 U.S. at 496 n. 14, 105 S.Ct. at 3285 n. 14. There is no question that the acts complained of in this case are related because they are all part of an alleged common scheme. See *Torwest DBC, Inc. v. Dick*, 810 F.2d 925, 928 (10th Cir.1987).

### **Summary**

The relationship test under RICO in the Tenth Circuit follows the Supreme Court's guidance that a pattern of racketeering activity requires "continuity plus relationship." This means that the acts must be related, which is satisfied if they are part of a common scheme, and they must also demonstrate continuity. The passage specifically references the Tenth Circuit's application of this test in the case of *Torwest DBC, Inc. v. Dick*.

[Tal v. Hogan, 453 F.3d 1244 \(10th Cir. 2006\)](#)

## **U.S. Court of Appeals — Tenth Circuit**

### **Extract**

As a final point, we question whether Plaintiffs' allegations of predicate acts satisfied the requirement of 'a pattern of racketeering activity.' A 'pattern' of racketeering is defined as 'at least two acts of racketeering activity, . . . which occurred within ten years' of each other. 18 U.S.C. § 1961(5). However, because 'RICO is not aimed at the isolated offender,' *Resolution Trust Corp.*, 998 F.2d at 1544, proof of two or more predicate acts are not sufficient to prove a pattern unless there is a relationship between the predicate acts and a threat of continuing activity. *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 239, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989); *Duran v. Carris*, 238 F.3d 1268, 1271 (10th Cir.2001). Continuity of threat requires both proof of 'a series of related predicates extending over a substantial period of time,' as well as a 'showing that the predicates themselves involve a distinct threat of long-term racketeering activity. . . or that the predicates are a regular way of conducting the defendant's ongoing legitimate business or the RICO enterprise.' *Resolution Trust Corp.*, 998 F.2d at 1543. To determine continuity we examine both the duration of the related predicate acts and the extensiveness of the RICO enterprise's scheme. *Id.*

## **Summary**

Detailed explanation of the relationship test under RICO in the Tenth Circuit. It specifies that a pattern of racketeering activity requires more than just two predicate acts; there must be a relationship between these acts and a threat of continuing activity. This involves demonstrating a series of related predicates over a substantial period and showing that these predicates pose a distinct threat of long-term racketeering or are a regular way of conducting business.

[Racketeer influenced and corrupt organizations.](#)

**American Criminal Law Review - Georgetown University Law Center - Mecone, James Morrison - 2006-03-22**

## **Extract**

The Tenth Circuit has posited a multi-factor approach in its relationship analysis, but looks mainly at two factors, duration and extensiveness. See Resolution Trust Corp. v. Stone, 998 F.2d 1534, 1543 (10th Cir. 1993) (holding duration and extensiveness 'are particularly relevant to the determination of continuity'). Extensiveness is determined by considering the number of victims, the number of acts, the variety of acts, the distinctiveness of the injuries, and the complexity of the scheme. See *id.* (listing factors that determine 'extensiveness').

## **Summary**

The passage provides insight into how the Tenth Circuit approaches the relationship test under RICO. It highlights that the Tenth Circuit uses a multi-factor approach, focusing primarily on the duration and extensiveness of the racketeering activity. Extensiveness is further broken down into factors such as the number of victims, acts, variety of acts, distinctiveness of injuries, and complexity of the scheme. This indicates that the Tenth Circuit has a specific framework for evaluating the relationship aspect of the "continuity plus relationship" test under RICO.

[Racketeer influenced and corrupt organizations.](#)

**American Criminal Law Review - Georgetown University Law Center - Sacks, Michele - 2005-03-22**

## **Extract**

The Tenth Circuit has posited a multi-factor approach in its relationship analysis, but looks mainly at two factors, duration and extensiveness. See Resolution Trust Corp. v. Stone, 998 F.2d 1534, 1543 (10th Cir. 1993) (holding duration and extensiveness 'are particularly relevant to the

determination of continuity'). Extensiveness is determined by considering the number of victims, the number of acts, the variety of acts, the distinctiveness of the injuries, and the complexity of the scheme. See *id.* (listing factors that determine 'extensiveness').

## **Summary**

Clear explanation of the Tenth Circuit's approach to the relationship test under RICO. It highlights that the Tenth Circuit uses a multi-factor approach, focusing primarily on the factors of duration and extensiveness. The passage further elaborates on what constitutes extensiveness by listing factors such as the number of victims, acts, variety of acts, distinctiveness of injuries, and complexity of the scheme. This information is directly relevant to understanding how the Tenth Circuit evaluates the relationship test under RICO.

[Racketeer influenced and corrupt organizations.](#)

**American Criminal Law Review - Georgetown University Law Center - Argust, Corey P. - 2010-03-22**

## **Extract**

The Tenth Circuit has posited a multi-factor approach in its relationship analysis but looks mainly at two factors: duration and extensiveness. See *Resolution Trust Corp. v. Stone*, 998 F.2d 1534, 1543 (10th Cir. 1993) (holding duration and extensiveness 'are particularly relevant to the determination of continuity'); see also *Tal v. Hogan*, 453 F.3d 1244, 1268 (10th Cir. 2006) ('To determine continuity we examine both the duration of the related predicate acts and the extensiveness of the RICO enterprise's scheme.'). Extensiveness is determined by considering the number of victims, the number of acts, the variety of acts, the distinctiveness of the injuries, and the complexity of the scheme. See *Resolution Trust*, 998 F.2d at 1543.

## **Summary**

The Tenth Circuit employs a multi-factor approach to analyze the relationship and continuity of predicate acts under RICO. The primary factors considered are the duration and extensiveness of the acts. Extensiveness is further analyzed by looking at the number of victims, the number of acts, the variety of acts, the distinctiveness of the injuries, and the complexity of the scheme. This approach is specific to the Tenth Circuit and is used to determine whether a pattern of racketeering activity exists.

[Racketeer influenced and corrupt organizations.](#)

## **American Criminal Law Review - Georgetown University Law Center - Bagley, Ross - 2007-03-22**

### **Extract**

The Seventh and Tenth Circuits employ the H.J. Inc. test and consider duration and open-endedness of the racketeering activity, but cling to the multi-factor test applied prior to H.J. Inc. ... The Tenth Circuit has posited a multi-factor approach in its relationship analysis, but looks mainly at two factors.

### **Summary**

The Tenth Circuit uses the H.J. Inc. test, which involves considering the duration and open-endedness of racketeering activity. Additionally, the Tenth Circuit employs a multi-factor approach for the relationship analysis, focusing mainly on two factors. This suggests that the Tenth Circuit has a specific method for determining the relationship aspect of the RICO pattern requirement, which involves a combination of the H.J. Inc. test and a multi-factor analysis.

### Racketeer influenced and corrupt organizations.

## **American Criminal Law Review - Georgetown University Law Center - Holt, Michael W. - 2009-03-22**

### **Extract**

The Seventh and Tenth Circuits, while facially employing the H.J. Inc. test and considering duration and open-endedness of the racketeering activity, continue to use the multi-factor test applied prior to H.J. Inc.

### **Summary**

The Tenth Circuit uses a multi-factor test to determine the relationship prong of the RICO pattern requirement. This is in line with the H.J. Inc. test, which requires both a relationship between predicate acts and continuity of those acts. The Tenth Circuit considers factors such as duration and open-endedness of the racketeering activity.

### Racketeer influenced and corrupt organizations.

## **American Criminal Law Review - Georgetown University Law Center - Douglass, Sean M. - 2011-03-22**

## **Extract**

The Tenth Circuit has posited a multi-factor approach in its relationship analysis but looks mainly at two factors: duration and extensiveness. See Resolution Trust Corp. v. Stone, 998 F.2d 1534, 1543 (10th Cir. 1993) (holding that duration is important because continuity is a temporal concept and that extensiveness is significant because multiple ongoing activities are more likely to satisfy continuity than sporadic related acts), superseded on other grounds by statute, Private Securities Litigation Reform Act of 1995, Pub. L. No. 104-67, 109 Stat. 737; see also Tal v. Hogan, 453 F.3d 1244, 1268 (10th Cir. 2006) ('To determine continuity we examine both the duration of the related predicate acts and the extensiveness of the RICO enterprise's scheme.'). Extensiveness is determined by considering the number of victims, the number of acts, the variety of acts, the distinctiveness of the injuries, and the complexity of the scheme. See Resolution Trust, 998 F.2d at 1543.

## **Summary**

Detailed explanation of the relationship test under RICO in the Tenth Circuit. It highlights that the Tenth Circuit uses a multi-factor approach focusing on two main factors: duration and extensiveness. Duration is important as it relates to the temporal aspect of continuity, while extensiveness involves evaluating the number of victims, acts, variety of acts, distinctiveness of injuries, and complexity of the scheme. This approach is consistent with the broader "continuity plus relationship" test used in other circuits but emphasizes specific factors relevant to the Tenth Circuit.

[Vol. 4 No. 3 Pg. 7 Rico and the Prime: Taking a Bite Out of Crime?](#)

**Utah Bar Journal - Utah State Bar - 1991-00-00**

## **Extract**

A working definition of pattern must include the 'continuity plus relationship' factor, see id. at 495 n. 14, and should demonstrate two or more distinctive predicate acts which are connected by common purpose, methods, results, perpetrators or targets. For decisions of the 10th Circuit Court on this subject, see Pitts v. Turner & Boisseau, Ctd., 850 F.2d 650, 652 (10th Cir. 1988); Garbade v. Great Divide Mining & Milling Corp., 831

## **Summary**

The passage provides insight into the "continuity plus relationship" test, which is a key component of establishing a pattern of racketeering activity under RICO. This test requires that the predicate acts be connected by common purpose, methods, results, perpetrators, or targets. The passage

also references specific 10th Circuit cases that have addressed this issue, indicating its relevance to the jurisdiction in question.

### [Civil Rico: A Tool of Advocacy](#)

#### **The Brief - American Bar Association - 2024-01-01**

##### **Extract**

The Tenth Circuit has devised a more demanding standard for showing a pattern.

##### **Summary**

The Tenth Circuit requires a more demanding standard for establishing a pattern under RICO. This suggests that the Tenth Circuit may have stricter criteria for determining whether the acts are related and continuous, which are key components of the relationship test under RICO.

### [RECONCEIVING COERCION-BASED CRIMINAL DEFENSES.](#)

#### **Journal of Criminal Law and Criminology - Northwestern University, School of Law - Galoob, Stephen R. - 2022-03-22**

##### **Extract**

The inquiry here is meant to invoke the 'pattern of racketeering activity' element of the Racketeer Influenced and Corrupt Organizations Act (RICO). The Organized Crime Control Act (1970), which includes RICO, provides that 'criminal conduct forms a pattern if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.' The Supreme Court characterized this requirement as a 'relationship' element and held that the statute further requires a 'continuity' element, 'referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition.'

##### **Summary**

The passage explains the "relationship" element under RICO, which is part of the "pattern of racketeering activity" requirement. It describes how criminal acts must be interrelated by distinguishing characteristics and not be isolated events. Additionally, it mentions the "continuity" element, which involves either a closed period of repeated conduct or conduct that poses a threat of future repetition. This explanation is relevant to understanding the relationship test under RICO in the Tenth Circuit.

## [RICO: A Primer](#)

### **Extract**

The heart of a RICO case is the existence of a pattern of racketeering activity. Under the statute, 'racketeering activity' includes a host of offenses. ... A 'pattern' may exist where any combination of two or more offenses occurred within a period of time. In *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, the Supreme Court held that the RICO pattern element requires more than merely proving two predicate acts of racketeering. Rather, proof of 'continuity plus relationship' is necessary. Nonetheless, the Supreme Court has repeatedly recognized that Congress had a fairly flexible concept of a pattern in mind.

### **Summary**

The passage explains that to establish a pattern of racketeering activity under RICO, it is not enough to simply prove two predicate acts. Instead, there must be proof of "continuity plus relationship." This indicates that the relationship test under RICO involves demonstrating that the predicate acts are related to each other and that they pose a threat of continued criminal activity. This requirement is part of the broader framework for establishing a RICO violation, which is applicable in the Tenth Circuit as well as other jurisdictions.

This memo was compiled by Vincent AI based on vLex materials available as of June 10, 2025. [View full answer on vLex](#)