

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-15-90034

Before **TYMKOVICH**, Chief Judge

ORDER

Complainant has filed a complaint of judicial misconduct against a district 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”); and 2) the federal statute dealing with judicial misconduct, 28 U.S.C. § 351 *et seq.* 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 judge shall not be disclosed in this order. *See* JCD Rule 11(g)(2).

Complainant alleges the subject judge engaged in misconduct while presiding over complainant's criminal proceeding. Specifically, complainant alleges the subject judge ordered the Marshals to place complainant in handcuffs and put a muzzle over his mouth.

I conducted a limited inquiry of complainant's allegation by reviewing the relevant transcripts and speaking to the supervising Marshal. *See* JCD Rule 11(b) (authorizing a chief judge to communicate with persons having knowledge of the allegations and review transcripts to determine what action to take under Rule 11(a)). The results of my limited inquiry do not support a finding of misconduct. To the contrary, it appears from the transcript that the subject judge demonstrated considerable restraint given the number of times complainant interrupted the proceeding. Although the subject judge ordered the Marshals to keep complainant in his seat and asked whether the Marshals could prevent complainant from speaking out of turn, complainant was never physically muzzled. In fact, the subject judge withdrew his request to prevent complainant from speaking, noting a concern for the complainant's physical safety. Accordingly, complainant does not allege conduct that is prejudicial to the effective and expeditious administration of the business of the courts. *See* JCD Rule 11(c)(1)(A).

Complainant also alleges that the subject judge improperly struck all of complainant's motions and failed to sanction the Assistant U.S. Attorney and federal public defender involved in the matter. These claims 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).

Finally, complainant contends the court “mis[led] and tricked [him]” and that the subject judge has been part of a malicious prosecution and has covered up the misdeeds. Complainant adds that the subject judge “chose to show bias and judicial abuse, harassment” and other “gross misconduct.” While allegations of conspiracy and bias can state a valid claim for misconduct even when the allegations relate to a judge’s ruling, *see* Commentary to JCD Rule 3, these claims fail because they are 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).

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 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 42 days after the date of the chief judge’s order. *Id.*

So ordered this 22nd day of June, 2016.

/s/ Timothy M. Tymkovich

Honorable Timothy M. Tymkovich
Chief Circuit Judge