

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

Nos. 10-17-90016 through 10-17-90018 &
Nos. 10-17-90019 through 10-17-90021

Before **TYMKOVICH**, Chief Judge

ORDER

Two complainants have filed similar complaints of judicial misconduct against three circuit judges in this circuit concerning the same civil matter. My consideration of these complaints 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 complainants and subject judges shall not be disclosed in this order. *See* JCD Rule 11(g)(2).

Two complainants, a litigant and his attorney, filed separate complaints of judicial misconduct against the three circuit judges assigned to hear the litigant’s civil appeal.

The litigant/complainant asserts that the three judges demonstrated bias and ruled with improper motives. The litigant/complainant appears to take issue with several rulings against him. Among other things, he contends that the judges consistently ruled without a legal or factual basis, improperly excluded permitted material pleadings, abused their discretion, and ruled too quickly, all of which he asserts supports his contention that the judges were biased against him. He also contends that the judges had improper relationships with the parties and he cites to news articles and other materials dating back to before the judges were appointed to the federal bench. The attorney/complainant also takes issue with several of the same rulings, including an order imposing sanctions against him, and asserts that the facts alleged by the litigant/complainant also demonstrates retaliatory animus.

Insofar as both complainants take issue with the rulings against them, 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); *see also* Commentary to JCD Rule 3 (stating that “[a]ny allegation that calls into question the correctness of an official action of a judge—without more—is merits-related”).

As complainants also allege that the judges were biased and retaliatory, I reviewed the docket and the materials cited by the parties. Consequently, I have determined that the allegations are baseless. While allegations of bias and retaliation can state valid claims for misconduct even when those claims relate to a judge’s ruling, *see* Commentary to JCD Rule 3, these claims fail because they are 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, these complaints are dismissed pursuant to JCD Rule 11(c). The Circuit Executive is directed to transmit this order to complainants 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, complainants 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 September, 2017.

/s/ Timothy M. Tymkovich

Honorable Timothy M. Tymkovich
Chief Circuit Judge