

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

Nos. 10-17-90023 & 10-17-90024

Before **TYMKOVICH**, 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 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 complainant and subject judges shall not be disclosed in this order. *See* JCD Rule 11(g)(2).

Complainant alleges that the district and magistrate judges assigned to her civil matter engaged in conduct prejudicial to the effective and expeditious administration of

the business of the court. Complainant alleges that both of the judges' rulings were inconsistent with the Federal Rules of Civil Procedure and their own practice standards. Specifically, complainant alleges that the magistrate judge's Report and Recommendation "prejudicially made jest of complainant's pleadings" and that the magistrate judge gave complainant the wrong due date for her response. Complainant also appears to allege that the district judge entered an order adopting the Report and Recommendation without waiting for complainant's response. Finally, complainant alleges that neither of the judges acknowledged complainant's arguments, which complainant asserts gave an appearance of bias.

Complainant's allegations that the judges' rulings were inconsistent with the Federal Rules and practice standards and failed to address her arguments 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").

Given complainant's specific allegations of bias, I reviewed the docket and the magistrate judge's Report and Recommendation and have determined that complainant's allegations of bias are baseless. While an allegation of bias can state a valid claim for misconduct even when the alleged bias relates to a judge's ruling, *see* Commentary to JCD Rule 3, this claim fails because it is 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 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 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