

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

Nos. 10-17-90027 through 10-17-90029

Before **TYMKOVICH**, Chief Judge

ORDER

Complainant has filed a complaint of judicial misconduct against a district judge and two magistrate judges 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 filed a complaint against the district and magistrate judges assigned to his civil matters. Complainant appears to take issue with the judges’ rulings against

him. Specifically, he asserts that the magistrate judge's rulings are "clearly erroneous in view of the evidence" and that the district judge erroneously denied new evidence in complainant's case. Complainant appears to believe that the same two subject judges have personal interests in private prisons, which affects their rulings. In a supplemental filing, complaint alleges that his complaint may have caused the district judge to intentionally delay his case.

Insofar as complainant challenges the judges' orders, 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 complainant alleges retaliation, I reviewed the dockets in complainant's civil matters, which do not support a claim of deliberate delay. Further, while allegations of improper motive can state a valid claim for misconduct even when they relate to a judge's ruling, *see* Commentary to JCD Rule 3, complainant's claim that the judges were improperly motivated by their personal interest in prisons 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