

**JUDICIAL COUNCIL OF THE  
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE  
JUDICIAL CONDUCT AND  
DISABILITY ACT

No. 10-17-90032

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 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 judge shall not be disclosed in this order. *See* JCD Rule 11(g)(2).

Complainant alleges a district judge engaged in “constructive racism” in connection with his criminal case. Complainant contends that the judge sentenced him to

a harsher sentence than he was entitled to, without physical evidence to prove the charges. He also asserts that the subject judge improperly overruled several of complainant's motions to sustain his conviction. Finally, he alleges that an all-white jury was impaneled in his case and that the subject judge offered justification for striking the one non-white member during voir dire. Complainant contends this was conspiratorial racism.

Complainant's allegations regarding his sentence and the motions in his case 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").

Insofar as complainant contends that the subject judge was improperly motivated by racism, this allegation is unsupported by "sufficient evidence to raise an inference that misconduct has occurred." *See* JCD Rule 11(c)(1)(D). I conducted a limited inquiry by reviewing the docket and found no evidence of bias. Further, even if complainant's allegation that the subject judge excused a non-white member of the jury is true, that contention is not enough to support an inference that misconduct has occurred.

While allegations of bias and conspiracy can state valid claims for misconduct even when the alleged conspiracy relates to a judge's ruling, *see* Commentary to JCD Rule 3, these claims fail because they are completely unsupported.

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 13th day of November, 2017.

/s/ Timothy M. Tymkovich

Honorable Timothy M. Tymkovich  
Chief Circuit Judge